

**THE IMPORTATION OF CANADIAN BEEF THAT
COMES FROM ANIMALS OLDER THAN 30
MONTHS OF AGE**

FIELD HEARING
BEFORE THE
SUBCOMMITTEE ON INTERSTATE COMMERCE,
TRADE, AND TOURISM
OF THE
COMMITTEE ON COMMERCE,
SCIENCE, AND TRANSPORTATION
UNITED STATES SENATE
ONE HUNDRED TENTH CONGRESS
FIRST SESSION

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FEBRUARY 21, 2007
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ONE HUNDRED TENTH CONGRESS

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WEDNESDAY, FEBRUARY 21, 2007

U.S. SENATE,
SUBCOMMITTEE ON INTERSTATE COMMERCE, TRADE, AND
TOURISM,
COMMITTEE ON COMMERCE, SCIENCE, AND TRANSPORTATION,
Bismarck, ND.

The Subcommittee met, pursuant to notice, at 10:07 a.m. in the Missouri Room, Bismarck State College, Hon. Byron L. Dorgan, Chairman of the Subcommittee, presiding.

**OPENING STATEMENT OF HON. BYRON L. DORGAN,
U.S. SENATOR FROM NORTH DAKOTA**

Senator DORGAN. We'll call the hearing to order. I'm Senator Byron Dorgan from North Dakota. This is a hearing of the Subcommittee of the U.S. Senate Commerce Committee. The Subcommittee that I chair includes the interstate commerce issues as part of its jurisdiction. The Ranking Member of my Subcommittee is Senator DeMint from South Carolina. He's not able to be with me today, but I want to thank all of you for coming.

This hearing will include a number of witnesses, following which we will have an open microphone, as you see in the middle of the room, to hear some of your comments. My hope would be to finish the hearing in 2 hours, but we'll see how that goes.

Let me describe why I'm here and why I've called this hearing. There is a proposal by the Department of Agriculture to expand the imports of live cattle from Canada over 30 months of age and boxed beef from animals of any age coming from Canada, and that proposal is very controversial. I have spoken publicly in opposition to the proposal.

There is now a public comment period on the proposal until March 12th, and I felt it appropriate to hold a hearing on the subject now. This is a very important issue to a very important industry in our country.

We have the Department of Agriculture (USDA) with us today. The head of the USDA's Animal and Plant Health Inspection Service, Dr. DeHaven, is with us. We have other witnesses I have asked to make statements this morning. I will ask questions of the witnesses, and as I indicated, following that we will have an open microphone for the hearing.

David Strickland is the principal staffer with me today from the Senate Commerce Committee. David, thank you for being here.

Mr. STRICKLAND. Thank you, sir.

Senator DORGAN. I'm going to give a statement at the opening to describe why this is an important issue and share my perspectives and some of the perspectives of others on the subject.

The beef industry is the largest segment of America's agricultural industry. About a million family farmers and ranchers in this country raise beef in all of our 50 states. North Dakota has 1.7-million head of cattle on 11,700 farms and ranches, and the beef industry contributes about \$600,000,000 a year to this state's economy. It's a big deal, and any of us who have traveled much around North Dakota understand the consequences of this industry.

In May of 2003 the U.S. closed the border to live cattle coming in from Canada when a cow from Alberta, Canada, was discovered to have BSE, better known as mad cow disease. The first animal with BSE was the first native cow to be found in North America. Unfortunately, it was not the last cow. There have been 12 native cases of BSE found in North America, and 10 of them have been in Canadian animals.

Here is a chart that shows the history of this from March 20, 2003, through Thursday, February 8th, this month, in which Canada found the—I say tenth case of BSE because the cow in Washington State with BSE was actually a Canadian cow. So we're talking about ten head of cattle in a relatively short period of time.

[The information referred to follows:]

Timeline of BSE Cases in North America

May 20, 2003: Canada finds 1st native case in an animal born in March 1997.

December 23, 2003: Canada's 2nd BSE case is found in Washington State.

January 2, 2005: Canada finds 3rd BSE case.

January 11, 2005: Canada finds 4th BSE case in an animal born after feed ban.

June 24, 2005: U.S. finds 1st native-born BSE case in a 12-year-old cow.

January 22, 2006: Canada finds 5th BSE case in an animal born after feed ban.

March 13, 2006: U.S. finds 2nd BSE case in a 10-year-old cow.

April 16, 2006: Canada finds 6th BSE case in an animal born after feed ban.

July 4, 2006: Canada finds 7th BSE case.

July 13, 2006: Canada finds 8th BSE case in an animal born after feed ban.

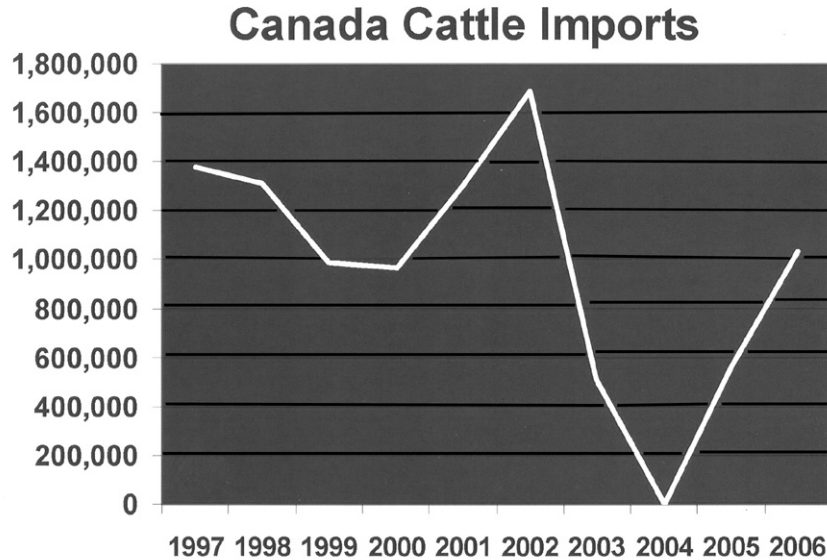
August 23, 2006: Canada finds 9th BSE case.

Thursday, February 8, 2007: Canada finds 10th BSE case.

Now, I want to show you the consequences of all of this. As you know, USDA Prime is the best label you can have on a cut of beef. It means that cut of meat has been certified by USDA as among the most choice cuts of beef, and American beef has largely been recognized as the safest in the world because of our inspection system and because of what we have done to make sure that reputation exists. None of us want to do anything that would jeopardize that reputation.

Now, let me talk about the imports of Canadian beef over the last decade, and this chart shows what has happened. You'll see we were up to 1.7-million head per year, in 2002. Immediately after the first Canadian cow was discovered, we shut off the import of Canadian cattle and beef to this country, and you can see the consequences of that were pretty dramatic. And then cattle under 30

months of age were allowed in and some boxed beef, and you see these numbers climbing back up.



If this rule is, in fact, changed that Secretary Johanns and the Administration want to change, we'll see 1.3-million head of Canadian cattle that will await import in 2007 under the new rule. That number comes from the U.S. Department of Agriculture (USDA).

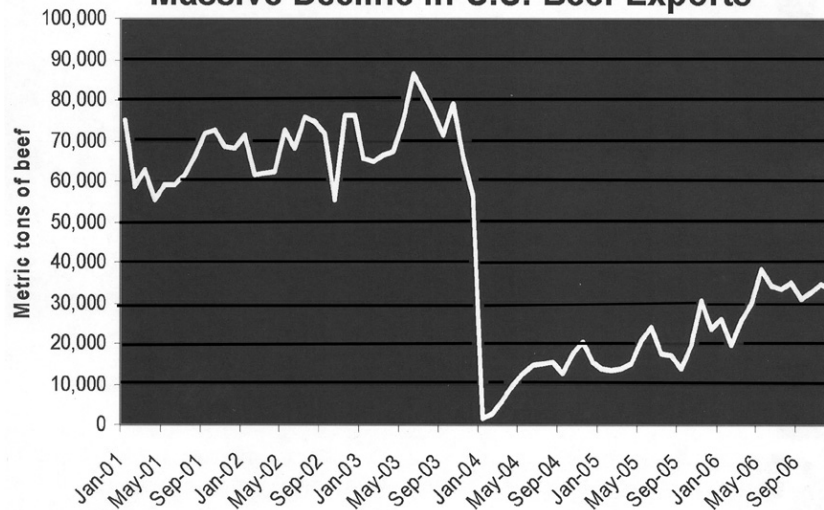
Now this shows what happened to our beef exports as a result of these activities. As you can see in the 2003 period, shortly thereafter, it just dropped off the table. An unbelievable impact. In 2004 we exported 209,000 metric tons of beef. Our share of the world's beef export was 3 percent.

Prior to that time it was very different, with 18 percent of the world's beef exports coming from this country. One in every five pounds of beef that was exported around the world was ours, and 1.1-million metric tons of beef were exported. That dropped precipitously, first almost to zero and then to just about 3 percent, just after the mad cow disease was discovered in December 2003.

Ranchers lost about \$100 million a month nationally, and it was a pretty devastating time.

As the next chart shows, another consequence of the animal that was found in Washington State, again a Canadian animal, was that Japan closed its markets to American beef for two-and-a-half years. Japan was our biggest customer, they'd been our number one export market, and we lost them for two-and-a-half years.

2003 BSE Discovery Triggered Massive Decline in U.S. Beef Exports



We're now trading with them again, and there are 35 foreign countries that will accept U.S. beef now, and we've worked hard to make that happen, but they will not accept Canadian beef.* Some would like there to be a North American market that has no distinction. There ought to be a distinction, in my judgment.

The next chart shows trade with South Korea, another example of the trouble we've had. We've been working hard to try to get back to that South Korean market after they stopped buying U.S. beef December 2003. It took a long while to get them to open their market, and it finally happened in October of last year. But we've run into trouble with them turning back boxes of beef coming into South Korea.

This article from a South Korean news agency says this: "The procedure of butchering both U.S.-raised cattle and cattle from neighboring countries is commonplace in the United States. It has sparked concerns in South Korea because beef from Canada, which has reported numerous mad cow cases, could be included by mistake."**

I make that point only to say that we don't operate in a vacuum here, and if we don't have country-of-origin labeling, don't have segregation, don't have the kinds of things that will give our customers overseas confidence of what they're buying, then we bear the consequences of that financially.

Next chart, please. USDA has proposed a rule, and Secretary Johanns has been active in pushing it, to open this market, and as I indicated, there is now a comment period.

* "Thirty-five foreign countries accept U.S. beef, but not Canadian beef."—Canadian Beef Export Federation Newsletter (January 2007).

** Yonhap News, Wednesday, July 26, 2006, article entitled, S. Korean Undecided on Timing for Lifting of U.S. Beef Ban: Official.

Let me tell you about the Harvard study that was done. “The expected number of infected cattle in the U.S. over 20 years as a result of importing cattle from Canada would amount to 21 animals. Most of those infected animals (approximately 90 percent) would be imported directly, while the remaining 10 percent would represent secondary infections (i.e., native U.S. cases).”

The point is that a reputable study of this situation shows that we are going to be importing a problem, a problem for our market. And while my heart breaks for the Canadian ranchers, you know, I understand how awful this must be for them, our first responsibility is for our domestic industry, for this country’s interests. That must be our first responsibility.

Dr. DeHaven, who is with us today—and he can respond to this—is quoted, as saying “Considering Canada has roughly 5.5 million [head of] cattle over 24 months of age, under OIE guidelines, they could detect up to 11 cases of BSE in this population and still be considered a minimal-risk country.”

That minimal-risk issue might well be the case with respect to this assignment of words, but that is not the case with respect to those with whom we want to trade and those to whom we expect to be able to sell American beef. They will not view this as minimal-risk with respect to a marketplace in which we have 1.3-million head of Canadian cattle coming down across the border.

Now, let me make a couple of final points. I understand this is a very controversial issue, and I have been very concerned about opening this border quickly and precipitously. I’ve been one of those who has fought for a good number of years for something called country-of-origin labeling, and I know there are some people who don’t like that.

Consumers can find out where their shoes come from, where their T-shirts come from. There are labels on everything, but you can’t find out where your piece of meat comes from when you buy it at the grocery store, and that’s wrong.

So we enact country-of-origin labeling; it is the law. And then the USDA drags their feet for 2 years to implement it because they don’t like it, and then at midnight a provision is stuck in a bill to delay it by another 2 years. But we’re going to try very hard this year to get that done, to finally force country-of-origin labeling to be implemented. It makes no sense to me under any circumstance to allow the influx of 1.3-million Canadian cattle at a time when we have not been willing to do country-of-origin labeling; and even then if the acceptance of cattle from Canada is going to bring into this country additional cases of BSE or mad cow disease, it will have significant consequences on our beef market. And as I said before, our first responsibility is to our industry and our economic well-being. That is not being protectionist. That’s just using some common sense. So I’m holding this hearing to solicit some testimony. I know that we’re a big livestock state. We care a lot about these issues, all of us do, and I also know that Secretary Johanns is proceeding ahead and he intends to open this market if he can.

The period is still open for comments, and we’re going to continue to do a number of things, including holding this hearing, to try to get all of the facts on the table so that we understand the consequences of what’s being proposed.

Now that's the prelude. I'm sorry it took as long as it did, but I wanted to at least set the stage. You can see by the graphs that foreign demand has fallen off the table, and all of the consequences of these issues.

We have a number of witnesses with us today, and I'm very appreciative of them being here. Dr. Ron DeHaven is the Administrator of the Animal and Plant Health Inspection Service, USDA, in Washington, D.C. Mark Huseth is President of the North Dakota Stockmen's Association. Roger Johnson is the North Dakota Agricultural Commissioner. He's accompanied by Dr. Keller, the State Veterinarian. Elwood Barth is Secretary and Board Member of the North Dakota Farmers Union. Mr. Leo McDonnell is former President and Co-Founder of R-CALF USA, who is also a North Dakota rancher.

I want to thank all of you for being here. I am going to ask Dr. DeHaven to begin, and following the testimony of witnesses I intend to ask a series of questions. Following that we will have an open microphone period. I would ask that you summarize your testimony for us, in five to seven minutes.

Dr. DeHaven, thank you again.

STATEMENT OF DR. RON DEHAVEN, ADMINISTRATOR, ANIMAL AND PLANT HEALTH INSPECTION SERVICE (APHIS), DEPARTMENT OF AGRICULTURE

Dr. DEHAVEN. Chairman Dorgan, thank you for the opportunity to provide information on the U.S. Department of Agriculture's proposed rule to amend the minimal-risk region regulation for bovine spongiform encephalopathy, or BSE.

In January 2005 the USDA published a final rule that established conditions for the importation of live cattle younger than 30 months of age and certain other commodities from minimal-risk regions for BSE. A minimal-risk region can include a region in which BSE-infected animals have been diagnosed, but where sufficient risk-mitigation measures have been put in place to make the introduction of BSE into the United States unlikely. This rule designated Canada as the first minimal-risk country recognized by the Department of Agriculture.

Our current proposal published on January 9, 2007, would expand the scope of this 2005 rule to facilitate fair, science-based trade consistent with international standards as defined by the World Organization for Animal Health, or the OIE.

The rule proposes allowing the importation of bovine blood and blood products, bovine casings and part of the small intestine, and live bovines for any use born after March 1, 1999. This is the date that we have determined to be the date of an effective enforcement of the ruminant-to-ruminant feed ban in Canada.

The public comment period on these proposed actions, as you have indicated, will close on March 12th, and I want to encourage, along with you, that all stakeholders be part of our decisionmaking process by providing feedback through the submission of public comments.

Science played a central role in the development of the regulation, particularly with regard to the rigorous evaluation of risk. Sound science continues to guide our proposed actions.

The single most important thing that we can do to protect human health is the removal of specified risk materials, or SRMs, from the food supply. SRMs are those tissues that could be infected from a cow that is in fact infected with BSE. Likewise, the most significant step that we can take to prevent the spread of BSE in the animal population and bring about its eradication is the ruminant-to-ruminant feed ban.

International standards as defined by the OIE served as our reference in developing this minimal-risk region regulation and they continue to guide our proposed actions.

The OIE recommends the use of risk assessment to manage human and animal health risks of BSE. The OIE guidelines recognize that there are different levels of risk in countries or regions and suggest how trade may safely occur according to those levels of risk.

As we've moved forward in issuing the proposed changes, our risk assessment continues to include careful consideration of the entire risk pathway—all of the steps in both Canada and the United States that must occur for BSE to spread to an animal in our country. I want to stress that one individual step cannot be considered to represent the entire risk pathway. In short, we found that the risk to the United States by allowing these additional animals and commodities from Canada is negligible.

The risk assessment took into careful consideration the possibility that Canada could experience additional cases of BSE. Our risk assessment acknowledges that BSE is present in Canada at this time. We estimated the prevalence of BSE in the Canadian cattle herd using the exact same methods we used to determine the prevalence of BSE in the U.S. herd. We then used this estimate of prevalence to help assess the likelihood that BSE would be introduced into the United States from Canada over an extended period of time. We found that from a practical standpoint the risk to the United States via trade in animals and products with Canada is negligible.

The OIE standards recognize that trade can safely be conducted with countries that have BSE present in their cattle populations. Our proposed rule is consistent with these international standards.

The majority of imports from Canada are expected to be less than 2 years of age at the time of import. Our expectation is that BSE prevalence will continue to decrease given Canada's ruminant-to-ruminant feed ban, which has been in place since August 1997. Combined with the mitigative effects of both import requirements and the young age of most animals at the time of import, the likelihood of a BSE animal being imported is minimal.

In addition, the series of strong risk mitigation measures in place in our country would make it highly unlikely that the disease would infect a U.S. animal.

We also recognize that there have been cases in animals born after March 1, 1999. These cases are not unexpected, nor do we consider such diagnoses to undercut our conclusion that March 1, 1999, can be considered the date of effective enforcement of the feed ban in Canada.

Experience worldwide has demonstrated that, even in countries with a feed ban in place, BSE has occurred in cattle born after a

feed ban was implemented. But such isolated incidents do not contribute to further significant spread of BSE.

As part of the original minimal-risk rule an evaluation was done that concluded Canada's feed ban is effectively enforced. Our proposed—in our proposed rule we considered when full implementation and effective enforcement of the Canadian feed ban was achieved. Full implementation occurred after completion of an initial implementation period and then after sufficient time had elapsed to allow most feed products to cycle through their system.

So in following the OIE standards, we identified March 1, 1999, as the date when Canada's feed ban became effective. We are not defining effective to mean 100 percent compliance or that there is no possibility for human error through that process, nor does it mean that no affected animals will be born after this date. Again, despite feed bans in many countries, affected animals continue to be found, but at a dramatically declining rate.

Senator our proposed actions are an important move in our efforts to promote fair, science-based trade practices. I am confident in saying that we can take this next step while at the same time protecting American agriculture and maintaining confidence in the U.S. beef supply.

I would be happy to answer your questions later in the program. Thank you.

[The prepared statement of Dr. DeHaven follows:]

PREPARED STATEMENT OF DR. RON DEHAVEN, ADMINISTRATOR, ANIMAL AND PLANT HEALTH INSPECTION SERVICE (APHIS), DEPARTMENT OF AGRICULTURE

Chairman Dorgan, thank you for the opportunity to be here today to provide you information on my agency's proposed rule to amend the minimal-risk region regulation for bovine spongiform encephalopathy (BSE) to allow the importation of ruminants over 30 months of age from minimal-risk regions. Currently, only Canada has received that designation.

In developing this proposal, we very carefully reviewed all the scientific information available to us and built upon the extensive analysis we conducted in writing the initial minimal-risk region regulation. Our regulatory actions are consistent with the guidance on BSE provided by the World Organization for Animal Health, or the OIE. The OIE guidelines, which I will describe further in a moment, promote safe trade in live animals and animal products based on how countries manage the known risk factors associated with the disease.

Our proposal, which remains open for public comment until March 12, is appropriate from both a scientific and practical standpoint and I appreciate the opportunity to share information with you on both these fronts.

USDA's Minimal Risk Region Regulation

As you know, in January 2005, USDA published a final rule that established conditions for the importation of live cattle younger than 30 months of age and certain other commodities from minimal-risk regions for BSE. A minimal-risk region can include a region in which BSE-infected animals have been diagnosed, but where sufficient risk-mitigation measures have been put in place so that the importation of ruminants and ruminant products will present a minimal-risk of introducing BSE into the United States. This rule designated Canada as the first minimal-risk country recognized by USDA.

Before discussing our current proposal, let me go back and discuss the central role science played in the development of the regulation, particularly with regard to the rigorous evaluation of risk.

Since the discovery of the first case of BSE in Great Britain in 1986, we have learned a tremendous amount about this disease. That knowledge has greatly informed our regulatory systems and response efforts.

We have learned that the single most important thing we can do to protect human health regarding BSE is the removal from the food supply of specified risk materials (SRMs)—those tissues that, according to the available scientific evidence, could be

infective in a cow with BSE. USDA's Food Safety and Inspection Service (FSIS) enforces this ban domestically and ensures that all countries exporting beef to the United States comply with the SRM ban. Likewise, the most significant step we can take to prevent the spread of BSE and bring about its eradication in the animal population is the ruminant-to-ruminant feed ban. It is because of the strong systems the United States has put in place, especially these two essential firewalls, that we can be confident of the safety of our beef supply and that the spread of BSE has been prevented in this Nation.

USDA has conducted a comprehensive risk analysis to support the January 2005 regulatory changes, and updated the analysis when the comment period was reopened and again when the rule was made final. This analysis drew on findings from the Harvard-Tuskegee BSE risk assessment, findings from the epidemiological investigation of BSE in Canada, information on Canadian BSE surveillance and feed ban, and history of Canadian imports of cattle and meat and bone meal from countries known to have BSE.

The results of that analysis confirmed that Canada has the necessary safeguards in place to protect U.S. consumers and livestock against BSE. These mitigation measures include the removal of SRMs from the food chain supply, a ruminant-to-ruminant feed ban, a national surveillance program, and appropriate, science-based import restrictions. Additionally, the extensive risk assessment conducted as part of USDA's rulemaking process took into careful consideration the BSE prevalence in Canada and that Canada could identify additional cases of BSE.

OIE Guidelines

As I mentioned earlier, international standards as defined by the OIE served as a reference in developing the minimal-risk region regulations and they continue to guide our proposed actions.

These international standards are used by national veterinary authorities to prevent the introduction of animal diseases, such as BSE, while avoiding unjustified trade barriers. The OIE recommends the use of risk assessment to manage human and animal health risks of BSE. OIE guidelines, based on current scientific understanding, recognize that there are different levels of risk in countries or regions, and suggest how trade may safely occur according to the levels of risk.

As we've moved forward in issuing the proposed changes to the minimal-risk region regulation, our risk assessment continues to include careful consideration of the entire risk pathway—all of the steps, in both Canada and the United States, that must occur for BSE to be spread to an animal here in the United States. APHIS conducted a thorough risk assessment and found that the risk to the United States presented by allowing these additional animals and commodities from Canada is negligible.

Proposed Changes to the Minimal Risk Region Regulation

Our current proposal, published in the *Federal Register* on January 9, 2007, would expand the scope of the 2005 rule to facilitate fair, science-based trade, consistent with international standards as defined by the World Organization for Animal Health, or the OIE.

Specifically, the rule proposes allowing the importation of live bovines for any use born on or after, March 1, 1999; blood and blood products derived from bovines, collected under certain conditions; and casings and part of the small intestine derived from bovines. As I will discuss further in a few moments, March 1, 1999, is the date we have determined to be the date of effective enforcement of the ruminant-to-ruminant feed ban in Canada.

I'll note here that meat and meat products from animals of any age, with specified risk materials removed, were addressed in the January 2005 final rule that established the minimal-risk region classification. In March 2005, APHIS published a notice of a delay of applicability of certain provisions of that rule. This delay affected only meat and meat products from animals 30 months of age or older. If the proposed rule published on January 9 is made final, it would be consistent to lift the delay and also allow the importation of products derived from animals over 30 months of age into the United States.

Again, the public comment period on these proposed actions opened January 9, and will close on March 12, 2007. I encourage all stakeholders to be a part of our decisionmaking process by providing feedback through submission of public comments.

Analysis of Risk to U.S. Animal Health

APHIS completed a comprehensive risk assessment to evaluate the risk presented by allowing the additional commodities outlined in the January 2007 proposal to be imported from minimal-risk regions. The risk assessment breaks down the possible

pathways for the establishment of BSE in the U.S. cattle population into a series of steps and analyzes the likelihood of these steps in the process. It is important to note that the impact of any specific step depends on its relationship to the other steps in the pathway. In other words, one individual step can not be considered to represent the entire risk pathway.

As part of the risk assessment, we estimated the prevalence of BSE in the standing adult cattle population of Canada with the same methods that we recently used to estimate the prevalence of BSE in the United States. We then used this current estimate of prevalence to help assess the likelihood that BSE would be introduced into the United States over an extended period of time. We chose to evaluate what could happen over the next 20 years, assuming that the proposed rule would apply into the foreseeable future.

First we looked at the most likely scenario. Given that Canada has had a feed ban in place since 1997 and evidence indicates that the implementation of a feed ban results in decreasing BSE prevalence, the most likely scenario is that BSE prevalence in Canada will continue to decrease over the next 20 years.

This decrease, combined with the mitigative effects of our import requirements and the fact that the majority of imports from Canada are young animals that pose little risk of harboring BSE due to the disease's lengthy incubation period, would continuously decrease the possibility that infected animals would be imported over the 20-year period. Under this scenario, then, the likelihood of BSE exposure and establishment in the U.S. cattle population as a consequence of importing infected Canadian cattle is negligible.

We then considered other less likely scenarios that may over-estimate the overall risk. In these less likely scenarios, we assumed that BSE prevalence in Canada would remain constant during the next 20 years.

This would mean the continued detection of infected animals—born after the implementation of the feed ban—during the entire 20-year time frame. Even with these less likely scenarios, our assessment indicates that BSE will not be spread or become established in the United States as a result of the proposal.

The majority of imports from Canada are expected to be less than 2 years of age at the time of import. With the expectation that BSE prevalence will continue to decrease, and the mitigative effects of both the import requirements and the young age of animals at the time of import, the likelihood of a BSE positive animal being imported is minimal. In addition, the series of strong risk mitigation measures in place in our country would make it highly unlikely that the disease would infect a U.S. animal.

Analysis of Risk to U.S. Public Health

Although our risk assessment was conducted to evaluate animal health risks, we did use one model in our assessment to also consider possible impacts on public health. The results of this model also indicated that these potential impacts are extremely low.

As you know, public health in the United States is protected through slaughter practices, including the removal of specified-risk materials, and the ruminant-to-ruminant feed ban.

In conclusion, for all commodities considered under the current proposal, the risk of BSE infectivity is negligible and the disease will not become established in the United States. This is true even if Canada identifies additional cases of BSE and even if infected animals were to be imported to the United States.

BSE Cases in Canada

From the time of detection of the first native case of BSE in Canada in May 2003, 10 cases of Canadian-born BSE-infected cattle have been identified. Nine of these cases have been detected in Canada, and the other case was in a native-born animal exported to the United States, which tested positive for BSE in December 2003. The most recent case was detected in a mature bull from Alberta on February 8, 2007.

Right from the start, we've had an excellent working relationship with Canada that has enabled us to participate directly in several of their epidemiological investigations and receive all of the information we have needed to conduct the various risk analysis and regulatory work I'm discussing with you today.

All of the cases of BSE in Canada, save for the most recent, are considered in our prevalence estimate. However, let me stress that the model used for that estimate is much broader than simply evaluating the number of cases detected. As mentioned previously, we used that same model in our estimate of the prevalence of BSE in the United States. That analysis documented the fact that identifying additional cases of BSE over time does not significantly impact the overall estimate of prevalence, because the model incorporates a wide range of epidemiological informa-

tion and assumptions. The same principle would apply to our use of the model in estimating the prevalence in Canada—*i.e.*, the identification of additional cases would not significantly change the prevalence estimate.

We also recognize that there have been cases in animals born after the date proposed in our regulation as when the feed ban was effectively enforced. Let me say that these cases are not unexpected, nor do we consider such diagnoses in any way to undercut our conclusion that March 1, 1999 can be considered the date of effective enforcement of the feed ban in Canada. Let me also say that this is an area in which I invite all interested stakeholders to contribute to our decisionmaking process and provide us with their comments before March 12.

Experience worldwide has demonstrated that, even in countries with a feed ban in place, BSE has occurred in cattle born after a feed ban was implemented. No regulatory effort can ensure 100 percent compliance or avoid human error. But such isolated incidents do not contribute to further significant spread of BSE, especially when considered along with the series of other strong risk mitigations in place.

Our risk assessment acknowledges that BSE is present in Canada at this time. From a practical standpoint, however, the risk to the United States via trade in animals and products is negligible.

OIE guidelines recognize that trade can be conducted safely with countries that have BSE present in their cattle population. Our proposed rule is consistent with these guidelines. I want to emphasize again that our risk assessment considered the entire risk pathway—all of the series of risk mitigations in place. The proposed requirement—only allowing imports of live bovines born on or after March 1, 1999—is one step in the process that effectively decreases the risk.

Canadian Feed Ban

I'd like to say a few more words about the ruminant-to-ruminant feed ban in Canada and our evaluation regarding its effectiveness.

Similar to the United States, Canada has had feed ban regulations in place since August 1997.

The Canadian Food Inspection Agency (CFIA) has conducted a comprehensive epidemiological investigation into each of the BSE cases found in the country. In each instance, appropriate measures have been taken to identify and remove any birth cohorts (animals born within a year of the affected animal and that could possibly been exposed to the same feed at the same time) that were still alive. Each investigation also included a detailed examination to determine the possible feed exposure source. In those instances where noncompliance events occurred, CFIA has instituted enforcement investigations for regulatory violations.

Finally, as part of the original minimal-risk rule, an evaluation was done that concluded Canada's feed ban is effectively enforced. This conclusion was based on consideration of the regulations in place and the statutory authority for those regulations, adequate infrastructure to implement the regulations, and evidence of implementation and monitoring. In our January 9 proposed rule, we gave additional consideration to defining when full implementation and effective enforcement of the Canadian feed ban was achieved. Full implementation occurred after completion of an initial (or practical) implementation period and after sufficient time elapsed to allow most feed products to cycle through the system. For Canada, this practical implementation took approximately 6 months, and then 12 months was considered sufficient time to allow products to cycle through the system, given cattle management practices in that country.

In following the OIE guidelines for trade in live animals, we therefore identified March 1, 1999, as the date when Canada's feed ban was effectively enforced. We are not defining effectively enforced to mean 100 percent compliance, however, or that there is no possibility for isolated incidents/human error throughout the process. Nor does it mean that no affected animals will be born after this date—again, despite feed bans in many countries, affected animals continue to be found, but at a declining rate.

International Trade

USDA's efforts to reopen export markets to U.S. beef remain a top priority. We believe that the most effective way of promoting harmonized international beef trade is to base our own policies in sound science, and to encourage our trading partners to also base their import requirements on science. Our proposed changes to the minimal-risk region regulation are another positive step forward in this regard.

In regard to trade, Secretary Johanns has said on numerous occasions that our actions must be undertaken with the utmost deliberation, using science as the basis. In the absence of that science, sanitary and phytosanitary (SPS) restrictions will be

used arbitrarily by some nations, without any basis of protecting human or animal health.

I want to be very clear that while protecting human and animal health must remain our top priority, I know that we can seek to return to normal patterns of international commerce by continuing to use science as the basis for decisionmaking by U.S. regulatory authorities and our trading partners.

Conclusion

Senator, these proposed actions are an important move in our efforts to promote fair, science-based trade practices. I am confident in saying that we can take this next step while at the same time protecting American agriculture and maintaining confidence in the U.S. beef supply.

I am happy to answer any questions you have regarding the issues I've raised in my testimony.

Thank you again for the opportunity to be here today.

Senator DORGAN. Dr. DeHaven, thank you very much. Obviously you have stimulated my interest to ask a lot of questions, but I will defer until all our witnesses have testified. I will now call on North Dakota Agricultural Commissioner Roger Johnson.

**STATEMENT OF ROGER JOHNSON, COMMISSIONER, NORTH
DAKOTA DEPARTMENT OF AGRICULTURE**

Mr. JOHNSON. Thank you very much, Senator Dorgan, for holding this hearing. It's certainly a timely subject, and thank you, also, for granting me permission to be accompanied by our State Veterinarian, Dr. Keller.

Whenever I make statements relative to BSE, I've been careful to consult with her and to use the science that she understands as the basis of my statements and of my positions, and so I very much appreciate the fact that you've allowed her to be with me. It is—and I would also anticipate that if there are very technical questions, I would hope that I could defer to her scientific training to respond to some of those.

It has been frustrating for me to witness USDA's continuing efforts to open the border to Canadian cattle and products despite the known risk and the unknown prevalence of BSE in the Canadian cattle herd.

USDA acknowledges that cattle over 30 months of age are at even greater risk of having the disease than are the younger cattle currently allowed in under only stringent movement restrictions that require the transport of animals in a sealed truck directly to approved feedlots and/or slaughter.

Canada has now recorded, as you indicated, ten cases of BSE, six since the beginning of last year, and the most recent case just this month. I think there are a number of issues that we need to talk about.

First of all, Canada, itself, is taking additional precautions over and above what we are doing internally, and so it really begs the question, if we are allowing the Canadian cattle to come into our herd, should we be doing additional things to protect our herd as a result of that intermixing that's likely to be occurring?

USDA, I think, has unilaterally ignored the fact that other countries do not approve of USDA's new BSE minimal-risk status. This is something that was created just for Canada.

Canada will implement more stringent restrictions on the use of SRMs, specified risk materials, in both ruminant and non-rumi-

nant feed. The success of this prohibition will be inconclusive for several years. During the meantime, we will be importing these additional Canadian cattle.

This minimal-risk rule number two acknowledges the risk of SRMs from older Canadian cattle by declaring that the distal ileums of these older-aged animals cannot enter the U.S. The same rule, however, allows older cattle to be trucked across the border with their distal ileums intact. It makes no effort to completely remove the distal ileums from all U.S. beef shipped.

USDA's overall lack of responsible actions with respect to BSE in Canada has already decreased the status of the U.S. cattle herd in the eyes of our trading partners. And the information that you put up, Senator Dorgan, coming right out of the Korean press I think absolutely makes that point. When we intermingle these herds, other countries are going to take notice of that.

The second issue deals with feed cohorts and the types of BSE. Canada acknowledges that contaminated feed was the likely source of the infection up there and that additional feed cohorts are likely to be infected, as well. Yet higher risk, older feed cohorts will now be allowed to come across the border if this rule is adopted.

In addition, five Canadian BSE cases reportedly were born after the implementation of the 1997 feed ban, indicating that the feed ban has not been effective in preventing BSE or there is an even greater prevalence of BSE in their country than what was originally thought. Either scenario increases the probability that infected cows will be imported into the USA.

Canada is clearly admitting that it has a BSE problem. Through regulatory actions USDA appears to want to bring Canada's problem into the U.S. and make it ours.

The identification issue. If Canadian cattle over 30 months of age are allowed to come into the U.S., those animals must be permanently identified with an official tag and a CAN brand and must be strictly segregated by USDA through the entire slaughtering process. Should positive cases of BSE be found in any Canadian animals that are processed in the U.S., it must not be to the detriment of the U.S. cattle industry or our consumers.

USDA should not implement this rule until it can assure domestic and foreign markets of the origin of our beef products. Finding another BSE-infected cow from Canada in the U.S. could be just as devastating to our domestic market as it has been to our export markets.

As you indicated, I believe that we must have mandatory country-of-origin labeling fully implemented before we even consider additional imports of Canadian animals.

The question of age. Allowing the importation of Canadian-born cattle after March 1, 1999, does not make scientific sense in light of the BSE cases diagnosed in Canada after USDA declared that Canada's feed ban was, "effective." It's also unenforceable since it is nearly impossible to verify the true age of older cattle. In many cases veterinarians will have to accept producers' statements as the only source of verification on the age of the cattle.

BSE minimal-risk status. BSE is not only an animal health concern, it's also a public safety concern. Congress should demand that USDA adhere to the most conservative policies with respect to BSE

that the OIE guidelines allow. USDA appears to be establishing a much more lenient approach to animal health standards for the U.S. How can producers and consumers be assured that USDA's minimal-risk status would not be assigned to other countries subsequently who may have 19 or 109 or 229, or whatever number, greater number of BSE cases?

Foreign markets is the last issue I want to address. I believe this proposed rule will make it more difficult for the U.S. to regain its lost export markets. The United States must first restore and maintain the confidence of our foreign trading partners before we allow additional suspect animals into the U.S. marketplace from a country that has not met international standards of minimal-risk.

Japan and Korea have reduced U.S. beef imports and continue to put up additional restrictions and roadblocks. I believe that this issue of access to our foreign market needs to be resolved before we go down this road.

In summary, I believe that opening the border to these older than 30 months of age cattle in the manner proposed in this Minimal Risk Rule 2 cannot be justified at this time and will only serve to increase the risk of BSE being introduced into the U.S. cattle herd.

Thank you.

[The prepared statement of Mr. Johnson follows:]

PREPARED STATEMENT OF ROGER JOHNSON, COMMISSIONER, NORTH DAKOTA
DEPARTMENT OF AGRICULTURE

Senator Dorgan and Members of the U.S. Senate Subcommittee on Interstate Commerce, Trade, and Tourism, I am North Dakota Agriculture Commissioner Roger Johnson. I appreciate the opportunity to testify on behalf of North Dakota State Veterinarian Dr. Susan Keller and myself in opposition to the United States Department of Agriculture (USDA) proposal allowing importation of Canadian cattle over 30 months of age.

It is frustrating to witness USDA's continuing efforts to open the border to Canadian cattle and products, despite the known risks and the unknown prevalence of bovine spongiform encephalopathy (BSE) in the Canadian cow herd. USDA acknowledges that cattle over 30 months of age are at even greater risk of having the disease than are the younger cattle currently allowed in only under stringent movement restrictions that require transport of animals in a sealed truck directly to approved feedlots and/or slaughter. Canada has now recorded 10 cases of BSE, six within the last year and the most recent case just this month. Before we further lift of our import restrictions and requirements on Canadian cattle, we must consider a number of issues.

Canada Taking Additional Precautions

While Canada is taking additional measures to decrease the potential amplification and spread of typical BSE, USDA has unilaterally ignored the fact that other countries do not approve of USDA's new BSE minimal-risk status. This summer, Canada will implement more stringent restrictions on the use of specified risk materials (SRMs) in both ruminant and non-ruminant feed. The success of this prohibition will be inconclusive for several years, because of BSE's long incubation period. Further, the United States does not have these measures in place, nor are they even being initiated.

Minimal Risk Rule 2 (MRR2)—the proposed rule allowing Canadian cattle over thirty months of age into the U.S.—acknowledges the risk of the SRMs from older Canadian cattle by declaring that the distal ileums of these older age animals cannot enter the U.S. The same rule, however, allows older cattle to be trucked across the border with their distal ileums intact and makes no effort to completely remove the distal ileums from all U.S. feed supplements, including those to non-ruminants, as is the case now in Canada. How can this be explained logically to producers and consumers, both here and abroad?

While USDA buries its head in the sand, Canada is taking at least some additional actions to improve their ability to export and decrease the incidence of BSE in their national herd over time. USDA's overall lack of responsible actions with respect to BSE in Canada has already decreased the status of the U.S. cattle herd in the eyes of our trading partners.

Feed Cohorts and Types of BSE

Canada acknowledges that contaminated feed was the likely source of the infection and that additional feed cohorts are likely to be infected as well. Yet higher risk, older feed cohorts, will be allowed to come across the border, if this rule is adopted. In addition, five Canadian BSE cases reportedly were born after the implementation of its 1997 feed ban, indicating that either the ban has not been effective in preventing BSE or there is a greater prevalence of BSE in their country than originally thought. Either scenario increases the probability that infected cows will be imported into the U.S.

Canada is clearly admitting it has a BSE problem. Through regulatory actions, USDA appears to want to bring Canada's problem into the U.S. and make it ours. We must remember that Canada's BSE cases have all been identified as "typical" BSE and the U.S. cases have all been identified as an "atypical" form of BSE. The pathogenic differences between those two prion forms are still unknown.

Identification

I believe that if Canadian cattle over thirty months of age (OTM) are allowed to come into the U.S., those animals must be permanently identified with an official tag and a CAN brand and must be strictly segregated by USDA through the entire slaughtering process. Should positive cases of BSE be found in any Canadian animals that are processed in the U.S., it must not be to the detriment of the U.S. cattle industry or our consumers.

The recent investigation of seven head of Canadian animals slaughtered in a Nebraska plant dramatically points out the critical need to improve animal identification and tracking capabilities in the U.S., starting first at our ports and borders. USDA needs to start leading by example in all matters associated with animal health. Its primary concern should be its own current inability to quickly and accurately trace all animals that enter the U.S. and ultimately our food supply.

USDA should not implement this rule until it can assure domestic and foreign markets of the origin of our beef products. Finding another BSE-infected cow from Canada in the U.S. could be just as devastating to our domestic market as it has been to our export markets. We must have mandatory, country-of-origin labeling fully implemented before USDA further weakens our standards on Canadian beef imports.

Age

Allowing importation of Canadian cattle born after March 1, 1999 does not make scientific sense in light of the BSE cases diagnosed in Canada after USDA declared that Canada's feed ban was "effective." It is also unenforceable, since it is nearly impossible to verify the true age of older (Canadian) cattle. In many cases, veterinarians will have to accept producers' statements as the only source of verification on the age of their cattle. When dealing with a disease such as BSE, with its serious health and economic implications, this is not an effective import requirement. Animals born prior to March 1, 1999, will unknowingly (even to the veterinarians signing certificates of veterinary inspection) be able to move into the U.S. under this proposed rule.

BSE Minimal Risk Status

BSE is not only an animal health concern, but it is also a public safety concern. Congress should demand that USDA adhere to the most conservative policies with respect to BSE that the OIE guidelines allow. USDA appears to be establishing a much more lenient approach to animal health standards for the U.S. How can producers and consumers be assured that USDA's "Minimal Risk Status" will not be assigned to other countries that have 19, 109 or even a greater number of BSE cases?

Foreign Markets

I believe this proposed rule will make it more difficult for the U.S. to regain its lost export markets. The United States must first restore and maintain the confidence of our foreign trading partners before we allow any additional suspect animals into the U.S. marketplace from a country that has not met international standards of minimal-risk. Japan and Korea have reduced U.S. beef imports and continue to put up additional restrictions and roadblocks. I believe this rule would make it

even harder to regain their confidence and may result in the permanent loss of these markets. USDA's inability to fully regain these lost exports makes the case that more stringent standards are needed rather than proposing to allow additional risks for our domestic and foreign markets. If we are to maintain current export markets and regain lost export markets, USDA should make its existing and future BSE import policies compliant with OIE international standards.

Summary

The science of prion diseases (especially BSE) is still unfolding, and the sensitivity of tests and detection limits are continually improving. There must be more certainty and fewer assumptions before rules are promulgated to allow more high risk cattle from Canada to enter the U.S., or the results could be devastating. Opening the border to OTM age cattle in the manner proposed in the MRR2 cannot be justified at this time and will only serve to increase the risk of BSE being introduced into the U.S. cattle herd.

Senator Dorgan and Committee Members, thank you for the opportunity to testify on this important issue. I would be happy to answer any questions.

Senator DORGAN. Mr. Johnson, thank you very much. Next, we will hear from Mark Huseth, who is the President of the North Dakota Stockmen's Association. Mr. Huseth, thank you for being here.

STATEMENT OF MARK HUSETH, PRESIDENT, NORTH DAKOTA STOCKMEN'S ASSOCIATION

Mr. HUSETH. Thank you, Senator. Good morning. My name is Mark Huseth. My wife and I, Eileen, ranch in partnership with our adult sons on our third-generation family operation near McLeod, North Dakota, in the Sheyenne River Valley.

I have the privilege of representing cattlemen like myself from across this great state this year as President of the North Dakota Stockmen's Association. It is on their behalf that I appear before you today.

Our forward-thinking cattlemen and cattlegirls formulated a policy back at our 2005 annual convention in anticipation of this very proposed rule which would expand allowable Canadian imports to include live animals 30 months and older. The Stockmen's Association member resolution opposes any further expansion of Canadian beef trade until the United States receives assurances from Canada and its other trading partners that if trade is expanded and a problem is detected in a foreign-born import, that the animal's country-of-origin, not the U.S., will suffer from any resulting trade sanctions.

The resolution also calls for an orderly market transition plan to be put in place before the border is opened further so a sudden supply shock does not cripple the domestic market.

Nearly 2 years later these stipulations have not been satisfied, and so our opposition to the proposed rule holds true today.

Before I go any further, I want to emphasize that we are not opposed to the U.S. Department of Agriculture's proposed rule because of food safety concerns. That's because BSE, as you know, is not a contagious disease and the mode of infection is through the consumption of feed contaminated with abnormal prion protein.

The United States ruminant feed ban and other harvest measures, like the removal of all specified risk materials, have proven effective in identifying sick animals and keeping them out of the food supply. We're confident in this industry and the government-implemented firewalls to maintain the level of food safety and consumer confidence that we worked so hard for and are so proud of.

At the same time, the North Dakota Stockmen's Association views the realization of Canadian trade as premature. That's because we're still suffering from the consequences of the Canadian-born cow diagnosed with BSE in our country in December of 2003. The lone animal, commonly referred to as the "cow that stole Christmas," changed the U.S. beef industry. More than 3 years later we are still working to recover import global beef markets and the consumer confidence that were snatched away that December 23rd.

Before we open the border wider and possibly exaggerate the problems we already have, we have to make sure that we protect our domestic cattle producers from unintended harm to ensure that they have the opportunity to make an honest living without the threat of another country's cattle collapsing their market and driving them out of business.

Our members ask that USDA's proposed rule not be adopted until the following conditions have been met. Number one, the United States receives in writing guarantees from Canada and all of its other beef-trading partners that any disease problem identified in a foreign-born imported animal in the United States be considered the problem of its country-of-origin.

In addition, any trade sanctions those countries impose because of the disease situation be on that country-of-origin. The United States, on the other hand, would not suffer the kind of trade backlash it still is recovering from since the first case of BSE in 2003. Likewise, the World Organization for Animal Health, or OIE, recognizes the United States with the same low-risk health status if the disease occurs in an imported animal.

Number two, USDA develops and implements an orderly market transition plan before expanding the scope of cattle and beef imports from Canada. This would involve gradually accepting in such imports so as not to overload our country's supply and crash those markets. We think this is especially critical to preserve our already-overloaded slaughter cow and slaughter bull processing facilities, particularly in the northern tier where many Canadian cattle would likely be sent.

You can imagine the impact when you add the estimated 545,000 cows and 66,000 cull bulls and stags that would enter this country each year over a 5-year period if the proposed rule is adopted. That would lead to an annual decrease in beef prices of approximately \$4 per hundredweight or \$50 for a 1,250-pound cow. Multiply that by an average of 140,000 cull cows sold by North Dakota producers each year, and you arrive at approximately a \$7 million impact per year to cattlemen and women from our state alone. We can't afford to do that.

Number three, before entering the United States all Canadian cattle are permanently identified with a universal hot-iron brand that designates them as Canadian cattle. The brand would preserve the cattle's identity through slaughter and make it crystal clear where they originated. Tattoos, on the other hand, cannot be read at a glance and can fade over time. Consequently, we do not support tattoos as identification means for these imported animals.

Number four, a further evaluation of the Canadian feed ban be conducted in light of the most recent BSE cases detected there.

While USDA has determined that Canada has a robust inspection program, that overall compliance with the feed ban is good and that the feed ban is reducing the risk of transmission of BSE in the Canadian cattle population, they did identify a possible exemption in the ban with mineral mixes produced with ruminant meat and bone meal before the feed ban took effect. Maybe a mandatory recall of such mixes would help curtail the number of cases there.

We empathize with our Canadian neighbors and the situation they are in. The North Dakota Stockmen's Association has always supported fair trade and maintained that our producers can compete and win in the global market of beef because of the superior cattle and beef we raise in this country.

We look forward to expanding our trade with Canada in the future. However, now is not yet the time, and in order for our beef trade with Canada to be fair, the steps we outline today must be taken before the USDA's rule is implemented.

We appreciate the chance to share our perspective with you today and the fact that you have recognized this issue as an important one to us. I thank you very much, and I will also address questions later, and if there are any technical ones, I would also defer to Dr. Keller.

[The prepared statement of Mr. Huseth follows:]

PREPARED STATEMENT OF MARK HUSETH, PRESIDENT, NORTH DAKOTA STOCKMEN'S ASSOCIATION

Good morning, Senator Byron Dorgan, and Members of the Senate Interstate Commerce, Trade, and Tourism Subcommittee.

My name is Mark Huseth. My wife, Eileen, and I ranch in partnership with our adult sons on our third-generation family operation near McLeod, N.D., in the Shyenenne River Valley. I have the privilege of representing cattle producers like myself from across this great state this year as the President of the North Dakota Stockmen's Association. It is on their behalf that I appear before you today.

Those forward-thinking cattlemen and cattlemen formulated policy back at our 2005 Annual Convention in anticipation of this very proposed rule, which would expand allowable Canadian imports to include live animals 30 months and older. The Stockmen's Association's member resolution opposes any further expansion of Canadian beef trade until the United States receives assurances from Canada and its other trading partners that, if trade is expanded and a problem is detected in a foreign-born import, that the animal's country-of-origin, not the U.S., will suffer any resulting trade sanctions.

The resolution also calls for an orderly market transition plan to be put in place before the border is opened further, so a sudden supply shock doesn't cripple the domestic market.

Nearly 2 years later, those stipulations have not been satisfied, and so our opposition to the proposed rule still holds true today.

Before I go further, I want to emphasize that we are not opposed to the U.S. Department of Agriculture's (USDA) proposed rule because of food safety concerns. That's because bovine spongiform encephalopathy, as you know, is not a contagious disease, and the mode of infection is through the consumption of feed contaminated with abnormal prion protein. The United States' ruminant feed ban and other harvest measures, like the removal of all specified risk materials (the only things capable of carrying the disease), have proven effective in identifying sick animals and keeping them out of the food supply. We're confident in these industry- and government-implemented firewalls to maintain the level of food safety and consumer confidence that we work so hard for and are so proud of.

At the same time, the North Dakota Stockmen's Association views the liberalization of Canadian trade as premature. That's because we are still suffering the consequences of the Canadian-born cow diagnosed with BSE in our country in December 2003. That lone animal, commonly referred to as "the cow that stole Christmas," changed the U.S. beef industry. More than 3 years later, we are still working to re-

cover important global beef markets and customer confidence that were snatched away that December 23.

Before we open the border wider and possibly exaggerate the problems we already have, we have to make sure that we protect our domestic cattle producers from unintended harm—to ensure that they have the opportunity to make an honest living without the threat of another country's cattle collapsing their market and driving them out of business.

Our members ask that USDA's proposed rule not be adopted until the following conditions have been met:

1. The United States receives, in writing, guarantees from Canada and all its other beef trading partners that any disease problem identified in a foreign-born, imported animal in the United States be considered the problem of its country-of-origin. In addition, any trade sanctions those countries impose because of the disease situation be on that country-of-origin. The United States, on the other hand, would not suffer the kind of trade backlash it still is recovering from since the first case of BSE in 2003. Likewise, the World Organization for Animal Health, or OIE, recognizes the United States with its same low-risk health status if the disease occurs in an imported animal.

2. USDA develops and implements an orderly market transition plan before expanding the scope of cattle and beef imports from Canada. This would involve gradually accepting in such imports so as not to overload our country's supply and crash those markets. We think this is especially critical to preserve our already-overloaded slaughter cow and slaughter bull processing facilities, particularly in the northern tier, where many Canadian cattle would likely be sent. You can imagine the impact when you add the estimated 545,000 cull cows and 66,000 cull bulls and stags that would enter this country each year over a five-year period if the proposed rule is adopted. That would lead to an annual decrease in beef prices of \$4 per hundredweight, or \$50 per 1,250-pound cow. Multiply that by an average of 140,000 cull cows sold by North Dakota producers each year and you arrive at a \$7 million impact per year to cattlemen and women from our state alone. We can't afford to do that.

3. Before entering the United States, all Canadian cattle are permanently identified with a universal hot-iron brand that designates them as Canadian cattle. The brand would preserve the cattle's identify through slaughter and make it crystal clear where they originated. Tattoos, on the other hand, cannot be read at a glance and can fade over time. Consequently, we do not support tattoos as an identification means for these imported animals.

4. A further evaluation of the Canadian feed ban be conducted in light of the most recent BSE cases detected there. While USDA has determined that Canada has a robust inspection program, that overall compliance with the feed ban is good and that the feed ban is reducing the risk of transmission of BSE in the Canadian cattle population, they did identify a "possible exception" in the ban with mineral mixes produced with ruminal meat and bone meal before the feed ban took effect. Maybe a mandatory recall of such mixes could help curtail the number of cases there.

We empathize with our Canadian neighbors and the situation they are in. We know what they are going through, because we're in a similar situation ourselves.

The North Dakota Stockmen's Association has always supported fair trade and maintained that our producers can compete and win in the global beef market, because of the superior cattle and beef we raise in this country. We look forward to expanding our trade with Canada in the future. However, now is not yet the time, and, in order for our beef trade with Canada to be fair, the steps we outlined today must be taken before USDA's rule is implemented.

We appreciate the chance to share our perspective with you today and the fact that you have recognized this issue as the important one it is. Thank you.

I would be happy to address any questions that you may have.

Senator DORGAN. Mr. Huseth, thank you very much. Next, we will hear from Mr. Leo McDonnell, on behalf of R-CALF USA. I understand you're from Columbus, Montana and ranch in Rhame, North Dakota; is that correct?

**STATEMENT OF LEO R. McDONNELL, JR., FORMER
PRESIDENT/CO-FOUNDER, RANCHERS-CATTLEMEN ACTION
LEGAL FUND, UNITED STOCKGROWERS OF AMERICA
(R-CALF USA)**

Mr. McDONNELL. Yes, sir. Thank you, Chairman Dorgan, for holding this hearing. It's very important to U.S. cattle producers.

Today USDA is considering allowing in over-30-month beef and cattle from Canada, a product that is banned for health concerns from nearly every international market, products that the United States cannot even export to our primary market. That is, USDA's actions will make the United States a dumping ground for beef and cattle banned from major international markets, and at the same time U.S. producers are being lobbied against by major importers here in the United States from being able to differentiate their product with country-of-origin labeling. Makes no sense. I think we have to ask ourselves who benefits from these actions? Not U.S. producers, not U.S. consumers.

It's been said that this is a North American problem. This is not a North American problem. Canada has tested around 140,000 head since 2004 and has found eight cases with typical prions. The United States has tested 800,000 head and found only two cases in our native herd with atypical prions. Completely different prions. The Canadian and the European prions with BSE are very aggressive, and really there's very little known about the atypical prions.

Make no doubt if USDA is allowed to proceed in allowing over-30-month beef and cattle, then the full weight of the Canadian problem is going to be put squarely on U.S. ranchers' shoulders, and Canada would be relieved of those problems, the economic problems.

You don't manage risk by increasing exposure. Sound science tells you you do not eradicate a disease by increasing exposure. United States should be pursuing sound science that is practiced by major importing countries, and we should strive to upward harmonize those import practices surrounding health and safety issues, not pursuing some of the lowest standards in the world.

U.S. beef exports remain at less than half of the 2003 levels, and yet we've had no assurances from USDA if they find additional cases in Canada or even the United States that we're going to be able to maintain what new export markets we've opened. I believe you pointed that out.

Last year we opened up to under-30-month cattle, and in 6 months our losses on cattle went from \$49 to \$150 per head as reported by USDA. The OTM rule on the relaxation of the delayed rule on beef will worsen its present situation.

Just last October three major packing plants said that they were going to cut their kill because of weakening demand and over-supplies of cattle. Why are we letting more in? And by the way, over three-quarters of the increase in the supply of those cattle were coming from Canada in the under-30-months.

The proposed OTM rule did not require Canada to implement the applied practices of other BSE-infected countries that have successfully reduced the incidence of BSE. Canada has a weaker feed ban. It only bans ruminant feed to ruminant animals, not ruminant feed to all animals.

Canada has an inferior BSE testing program. It does not test all high-risk cattle like other countries in the European Union and Japan does. Canada practices the least restrictive SRM removal policy. Other countries remove the vertebrae and all other high-risk tissues in much younger cattle. Given if the U.S. commingles Canadian cattle and beef with U.S. cattle and beef, it's not logical to expect that Canada's weaker feed ban, inferior testing program, and least restrictive SRM policies would help the U.S. to restore lost beef markets and gain new ones. You don't gain consumer confidence by lowering your standards.

The proposed OTM rule, like the existing BSE import policy, does not comply with international scientific standards. And I won't go through that. Roger Johnson went through it very well. I believe Dr. Keller will.

But I do want to point out that the OIE recommends that cattle not be exported from a BSE-affected country unless the cattle were born 2 years after the feed ban was effectively enforced, and that's the key word, "effectively." We've seen an increase in young cattle in Canada born after the feed ban and a decrease in the number of cattle that were born prior to the feed ban. That tells you they have not had an effective feed ban.

The OTM rule is inconsistent with OIE testing requirements, I believe. Based on OIE testing recommendations, Canada needs to test 187,000 consecutively targeted cattle with a BSE risk equal to that in the casualty slaughter age between four and seven years. They haven't done that.

As reflected by the OTM rule, the U.S. does not have a coherent comprehensive strategy for resuming beef exports, building new export markets, fully protecting animal health, and supporting consumer confidence in the safety of U.S. beef.

I think some of the things we need to look at before we even consider allowing in over-30-month beef or cattle is the U.S. should not give additional access to the U.S. market until the U.S. fully regains the share of the global market that we lost since 2003. Don't make a dumping ground out of the U.S. market for product other countries don't want.

The U.S. should not further relax its already lenient import standards until it can be scientifically documented that BSE is no longer in Canadian feed. I don't know if you all know this, but this summer Canada already has plans to tighten their feed ban. They recognize they're having problems, so they're going to make it more stringent. So why are we letting these cattle in here? We need to wait a while and let their feed ban work.

The U.S. should not allow the importation of over-30-month cattle or beef, which are known to be of higher risk for transmitting BSE, particularly now that the disease is known to have been circulating in animals born years after the Canadian feed ban.

The U.S. should not allow over-30-month cattle or beef from Canada in until both the U.S. and Canada has significantly strengthened their respective feed bans. The U.S. should not allow over-30-month Canadian cattle or beef into the United States until it additionally obtains firm assurances from all our U.S. beef export partners that if Canada or the U.S. has another case, they're not going to shut us down.

I believe I've probably gone over my time so I'll stop there, and thank you for holding this hearing.
[The prepared statement of Mr. McDonnell follows:]

PREPARED STATEMENT OF LEO R. McDONNELL, JR., FORMER PRESIDENT/CO-FOUNDER, RANCHERS-CATTLEMEN ACTION LEGAL FUND, UNITED STOCKGROWERS OF AMERICA (R-CALF USA)

Chairman Inouye, Vice Chairman Stevens, Members of the Committee, I am Leo McDonnell. My wife and I own and operate Midland Bull Test, which is a bull genetic evaluation center in Columbus, Montana, and we ranch in both Montana and North Dakota. Bulls from our test center have been sold in both the domestic and international market and we are cow/calf producers as well as seed stock producers. I am also proud to be a member of the Ranchers-Cattlemen Action Legal Fund—United Stockgrowers of America (R-CALF USA), an organization that I co-founded in the late 1990s. Our organization has worked tirelessly on behalf of the American cattle producer. Our focus has been on protecting and promoting the interests of independent cattle producers, and it is from that perspective that I speak to you today. I appreciate the opportunity to provide comments on this issue as it is very important to the cow/calf operators, backgrounders, stockers and feeders that constitute the heart of this country's cattle and beef industry.

Background

After the December 2003 detection in Washington State of a Canadian-born cow infected with bovine spongiform encephalopathy (BSE), over 50 export markets closed their borders to U.S. beef and in 2004, U.S. beef exports fell to a 19-year low.¹ While the U.S. has since struggled to negotiate even limited access for U.S. cattle and beef exports to foreign markets, the domestic market has been thrown open to a much broader range of imports from abroad, including imports from Canada where 10 native cases of BSE have so far been detected. As a result, the U.S. cattle industry experienced its third consecutive year of substantially reduced exports in 2006, with the U.S. running a significant trade deficit in cattle and beef estimated at \$2.7 billion. At the conclusion of 2006, U.S. beef exports remained at less than half their 2003 volume.²

Since late 2003, the U.S. border was closed to all but boneless Canadian beef derived from cattle less than 30 months of age—a product the World Organization for Animal Health (OIE) considers suitable for trade regardless of a country's disease status.³ However, in mid-2005, the USDA further opened the Canadian border to both imports of live cattle less than 30 months of age and an expanded scope of beef products from cattle less than 30 months of age.⁴

Within 6 months of the border's reopening to live cattle, domestic live cattle prices began to plummet. Fed cattle prices in the U.S. fell from \$96.50 per cwt. in December 2005 to \$79.10 per cwt. in May 2006, a decline of \$17.40 per cwt.⁵ Cattle producers who sold their fed cattle during this period suffered losses conservatively estimated by USDA within the range from \$4.08 per cwt. to \$12.93 per cwt., or \$49 to \$155 per head.⁶

R-CALF USA believes that USDA's existing BSE policies are contributing greatly to the ongoing losses experienced by U.S. cattle producers, and we seek the assistance of Congress to correct these existing policies. Notwithstanding the dire need to reverse *existing* BSE policies, the USDA's recently proposed OTM rule assures that current problems will be made far worse for U.S. cattle producers.⁷ The OTM rule would allow the importation of live Canadian cattle born after March 1, 1999, certain Canadian beef products immediately, and the full scope of Canadian beef products from cattle over 30 months of age at some point thereafter.

USDA's inability to fully restore lost export markets during the past 3 years, which has caused substantial harm to the U.S. cattle industry, is directly attributable to inappropriate BSE policies now in effect, and the proposed OTM Rule will only worsen the current situation for the following reasons:

A. The Proposed OTM Rule Does Not Require Canada To Implement the Practices That Other BSE-Affected Countries Are Using to Successfully Reduce the Incidence of BSE and Protect Consumers

Canada Has a Weaker Feed Ban

Canada has a weaker feed ban than other BSE-affected countries, and, because the U.S. imports Canadian beef and cattle nonetheless, the United States continues to experience difficulty in both restoring lost markets and gaining new ones. Under current U.S. policies, Canada is required to maintain only the most basic of feed

bans—a feed ban determined by other BSE-affected countries to be insufficient to control the disease. The feed bans of the European Union (EU) and Japan, for example, are much more restrictive as they ban all ruminant material, including blood, from *all* animal feed. Canada bans only ruminant material, with the exception of blood, from *only* ruminant animal feed. While Canada has announced intentions to begin strengthening its feed ban in July 2007, the long incubation period of BSE (approximately 5 years)⁸ necessitates a lengthy period of disease surveillance following implementation just to determine if the improvement is successful.

Canada Has an Inferior BSE Testing Program

In addition, Canada has an inferior BSE surveillance program when compared to other BSE-affected countries, and, because the U.S. imports Canadian beef and cattle nonetheless, the United States continues to experience difficulty in both restoring lost markets and gaining new ones. Under current USDA policies, Canada is not required to test all high-risk cattle for purposes of determining the prevalence of the disease and to ensure that all symptomatic cattle are removed from both the human food chain and animal feed chain. In contrast, Japan tests all high-risk cattle and all cattle entering the human food chain. The EU tests all high-risk cattle over 24 months of age and all OTM cattle entering the human food chain.⁹

Canada, however, has only a voluntary BSE testing program and is testing fewer cattle than many BSE-affected countries with much smaller herd sizes.¹⁰ Despite Canada's detection of BSE in younger cattle, including a 50-month old cow, Canada does not recognize the value of testing healthy cattle at slaughter. This stands in sharp contrast to the EU's experience, which caused the EU to begin testing all healthy slaughtered OTM cattle since 2001.¹¹ The EU detected 113 positive BSE cases in healthy slaughtered cattle in 2005.¹²

Canada Practices the Least Restrictive SRM Removal Policies

Canada practices the least restrictive specified risk material (SRM) removal policies when compared to other BSE-affected countries, and, because the U.S. imports Canadian cattle and beef nonetheless, the U.S. is experiencing difficulty in both restoring lost markets and gaining new ones. The proposed OTM Rule would subject Canadian cattle less than 8 years of age (cattle born after March 1, 1999) only to the same SRM removal policies adopted in the United States—a country unlike Canada that has detected only two *atypical* cases of BSE in cattle over 10 years of age. Thus, Canadian cattle less than 30 months of age will have only their tonsils and distal ileum removed, while only OTM cattle will be subject to the broader SRM removal requirements. However, the EU removes the broader list of SRMs from all cattle over 12 months of age and Japan removes the broader list of SRMs from cattle of all ages.

It is counterintuitive to expect that Canada's weaker feed ban, its inferior testing regime, and its less restrictive SRM removal policy are helping to restore consumer confidence in Canadian beef sold directly from Canada or Canadian beef sold from the United States. Current trade challenges clearly demonstrate this concern: South Korea, for example, which was the third largest U.S. beef importer in 2003,¹³ continues to demand that U.S. slaughter plants segregate U.S. cattle from Canadian cattle in their production lines to ensure that no Canadian beef is included in their U.S. beef imports;¹⁴ and, recent headlines from the ChinaDaily/Xinhua News Service stating "Beijing Confiscates Canadian Beef on Fear of Mad Cow Disease," further exemplifies the trade challenges associated with Canadian beef.¹⁵ Because Canada's feed ban is weaker, its BSE testing regime inferior, and its SRM removal policy less restrictive than those of other BSE-affected countries, which includes countries that import U.S. beef, the proposed OTM Rule will only worsen the unfavorable situation that already exists and should be withdrawn.

B. The Proposed OTM Rule, Like the USDA's Existing BSE Import Policy, Does Not Comply With International BSE Import Standards Established by the OIE

The OTM Rule Does Not Comply With the OIE's SRM Standards

The OIE has in the past and continues today to recommend that SRMs from cattle originating in a BSE-affected country not be imported for the preparation of animal feed or for the preparation of fertilizer.¹⁶ Current U.S. BSE policies ignore this recommendation and SRMs removed from live Canadian cattle currently entering the U.S. are free to enter the U.S. non-ruminant animal feed system as well as fertilizer production.¹⁷ While this failure to follow OIE recommendations is most likely already contributing to the ongoing difficulty in restoring lost beef markets and gaining new ones, the proposed OTM Rule would significantly aggravate this failure.

The proposed OTM Rule, because it would allow the importation of animals from a BSE-affected country with an unknown prevalence of BSE, would necessarily allow the importation of the entire list of SRMs contained in each animal. Until and unless the U.S. begins to follow international standards by expressly banning SRMs originating in Canadian cattle from the preparation of all animal feed and fertilizer, the USDA is not in compliance with OIE standards, and its demands to the international community to follow international standards will not be taken seriously.

The OTM Rule Does Not Comply With the OIE's Feed Ban Standards

Canada has so far confirmed four BSE cases born after the implementation of its 1997 feed ban, with three cases born years after (one in 1998, two in 2000, and one in 2002).¹⁸ A recent Dow Jones Newswires report regarding Canada's 10th case of BSE in a native animal, which was confirmed on February 7, 2007, suggests that this latest case was also born after the feed ban (in the year 2000).¹⁹ This would make a total of five positive BSE cases, or *half of all native Canadian cases*, born after the implementation of the Canadian feed ban. Whether there are 4 or 5 positive cases among Canada's 10 native cases that were born after the implementation of the Canadian feed ban, it is clear that the empirical evidence available to this Committee shows several truths:

1. Canada's known BSE prevalence has increased since 2003.
2. Canada's 1997 feed ban was not effective in preventing the spread of BSE.
3. Canada's system of BSE control measures and "interlocking safeguards" have not succeeded in preventing or eliminating its BSE problem. This shows that USDA's reliance on such systems to protect the United States against imported BSE is unwise: they simply do not work well enough to accomplish this goal.
4. Canada's BSE problem is ongoing. It is not confined to a few old cattle infected before the control measures were implemented (one of USDA's optimistic assumptions in re-opening the border in 2005). The data show that Canada's BSE problem persists and shows no immediate signs of diminishing.
5. Canada's prevalence rate of BSE is large enough so that there is close to 100 percent probability that continuing to import cattle from Canada will result in some BSE-infected cattle being imported into the United States.

These facts show that the USDA's proposal to allow OTM cattle, replete with the entire list of SRMs and the entire scope of bovine products from animals up to 8 years of age, into the United States is inconsistent with the OIE's international BSE import standards. The OIE makes clear that beef from cattle originating in a BSE-affected country that does not have an effectively enforced feed ban, i.e., a feed ban that does not reduce the prevalence of the disease, is to be derived only from cattle that have the entire, expanded list of SRMs removed if the cattle are over 12 months of age. Because the proposed OTM Rule would require the removal of the entire, expanded list of SRMs only in animals over twice this 12-month age limit, i.e., at 30 months of age, the OTM Rule does not comply with OIE standards.²⁰

Moreover, the OIE specifically states that cattle selected for export from a BSE-affected country should be born at least 2 years after the country's feed ban was effectively enforced (for a country like Canada with an undetermined BSE risk),²¹ or at least born after the date that the feed ban was effectively enforced (for a country unlike Canada with a controlled BSE risk).²² The USDA's proposed OTM Rule that would allow the importation of Canadian cattle born after March 1, 1999, despite multiple cases of BSE detected in cattle born long after that date, clearly violates this OIE standard, regardless of whether Canada is considered a controlled or undetermined risk.

The OTM Rule Is Inconsistent With OIE Testing Requirements

The USDA proposed OTM Rule is further inconsistent with OIE testing standards. Canada does not perform, and the OTM Rule would not require, sufficient testing of Canadian cattle to meet even minimal OIE testing standards. As a minimum, the OIE testing standards require a country like Canada to test 187,000 consecutive targeted cattle (with a BSE risk equal to that in the "Casualty slaughter, age between 4 and 7 years" subpopulation in Table 2), and be found BSE-free to be confident that the BSE prevalence is not more than 1 in 100,000.²³ However, Canada has tested only 143,528 total cattle during the combined years of 2004, 2005, 2006, and including up through February 12, 2007, with 8 positive BSE cases detected during this period.²⁴ While this empirical evidence shows that Canada's BSE prevalence is much greater than 1 in 100,000, Canada must increase its BSE testing significantly before any accurate estimation of the true magnitude of Canada's BSE problem can be made either by the U.S. or by international beef import-

ers. Until this is done, the U.S. should not consider any relaxation of current BSE import restrictions, and the proposed OTM Rule should be withdrawn.

Standing in stark contrast to Canada, the U.S. has tested approximately 800,000 cattle since June 1, 2004, and has detected only two *atypical* cases of BSE, both in cattle over 10 years of age.²⁵ Given the distinct difference between the BSE risk profile of Canada, when compared to the United States, the effect of *existing* BSE policies, which would be further aggravated by the OTM Rule, is to unjustly burden the U.S. cattle industry with the stigma of Canada's more serious BSE problem.

It is counterintuitive to expect that the OTM Rule that violates the OIE's SRM standards, that does not comply with the OIE's feed ban standards, and that is inconsistent with the OIE's BSE testing standards would help to restore consumer confidence in Canadian beef sold directly from Canada or Canadian beef sold from the United States. Because the proposed OTM Rule would be inconsistent with the OIE's SRM standards, feed ban standards, and testing standards, the proposed OTM Rule would only worsen the unfavorable situation that already exists and should be immediately withdrawn.

C. As Reflected by the OTM Rule, the U.S. Does Not Have a Coherent, Comprehensive Strategy for Resuming Beef Exports, Building New Markets, Fully Protecting Animal Health, and Supporting Consumer Confidence in the Safety of U.S. Beef

R-CALF USA recommends that Congress issue a formal directive to the USDA to ensure that the U.S. develops an aggressive, coherent, and comprehensive BSE strategy for resuming beef exports, building new markets, fully protecting animal health, and supporting consumer confidence in the safety of U.S. beef. The Animal Health Protection Act empowers the Secretary of Agriculture to take action to prevent "the introduction into or dissemination within the United States" of animal diseases from other countries. Until recently, USDA policy had recognized that: "Preventing the introduction of BSE into the United States is critical."²⁶ But USDA has now abandoned the Congressional mandate to prevent the introduction of a devastating disease, BSE, and proposes to rely only on measures to mitigate the dissemination of the disease once it has entered the United States. R-CALF USA believes that Congress must now intervene to ensure this important Congressional mandate is followed and offers the following 7 principles for Congress' consideration:

1. The U.S. should not give additional access to the U.S. market to imports from countries known to have BSE until the U.S. fully regains the share of the global export market it has lost since 2003. Before opening the border further to Canada or other BSE-affected countries, the U.S. must get assurances from other countries that export markets will not be lost if additional BSE cases are found in Canada or if the U.S. finds a Canadian case here.

Allowing OTM Canadian cattle and beef into the U.S. will further harm the United States' ability to fully restore lost export markets. After 3 years of allowing Canada—a country where BSE is known to have circulated years after implementation of a feed ban—to have access to the U.S. market, the U.S. share of the global beef market has fallen from 18 percent in 2003 to an estimated 7 percent in 2006.²⁷ The export markets that have reopened have imposed stricter conditions on U.S. beef exports than what the U.S. requires on Canadian imports, and several export markets continue to ban U.S. exports that contain beef from Canadian cattle.

2. The U.S. should not further relax its already lenient import standards until it can be scientifically documented that BSE is no longer circulating in Canadian feed or in OTM Canadian cattle and there is international acceptance for such a conclusion.

The full magnitude of Canada's BSE epidemic is still unfolding, but it is already much greater than what USDA has asserted and assumed. BSE has now been detected in 10 Canadian-born cattle. If media reports that indicate the latest case was born in 2000 are correct, then half of Canada's known cases were born after Canada implemented its feed ban. This evidence demonstrates that Canada's feed ban was not effective in preventing the spread of BSE in either its feed system or cattle herd.

3. The U.S. should not allow the importation of OTM cattle or beef, which are known to be of higher risk for transmitting BSE, particularly now that the disease is known to have been circulating in animals born years after the Canadian feed ban.

Cattle over 30 months of age that originate in a BSE-affected country have an inherently higher risk for transmitting BSE. As recently as January 2005, the USDA stated that the two most important factors in determining risk were the age

of the cattle and the effect of the feed ban. Now that the feed ban is known to be ineffective, the 30-month age limit remains as the most important factor in minimizing the risk of introducing BSE into the U.S. from Canada.

4. The U.S. should not allow imports of OTM cattle or beef from Canada until both the U.S. and Canada have significantly strengthened their respective feed bans and sufficient time has lapsed to ascertain the effectiveness of any feed ban improvements. Given the known breeches in Canada's feed ban, Canada must significantly ramp-up its BSE testing so that the effectiveness of its feed ban can be more accurately monitored.

As previously recognized by the Food and Drug Administration, and as recognized by international BSE experts, current BSE mitigation measures are inadequate to address the increased risk associated with OTM cattle and beef from Canada. The Food and Drug Administration, the Canadian Food Inspection Service, and international BSE experts all have acknowledged the need to strengthen the feed bans implemented in both the U.S. and Canada to prevent the spread of BSE. However, neither country has yet implemented improvements to their respective feed bans.

5. The U.S. should not allow OTM Canadian cattle or beef into the U.S. until it additionally obtains firm assurances from all U.S. beef export markets and the OIE that the United States' BSE risk profile would not be downgraded to Canada's level if Canadian OTM cattle and beef are allowed into the U.S. market and available for export.

Allowing OTM Canadian cattle and beef into the United States will immediately harm the United States' international disease risk profile. The United States has a more favorable BSE risk profile than Canada. Canada cannot possibly meet the OIE standard for a country with a negligible BSE risk, which requires that the youngest BSE case must be born more than 11 years ago.²⁸ However, because the U.S. has only detected BSE in two native animals, both born well before the feed ban and the youngest of which was estimated to be 10 years of age on February 28, 2006, the U.S. will likely meet the international standard to be considered a negligible BSE risk country if it does not mix Canadian cattle and beef with U.S. cattle and beef.

6. The U.S. should not allow OTM Canadian cattle or beef into the U.S. until the U.S. additionally implements country-of-origin labeling to mitigate the financial harm that will inevitably befall U.S. cattle producers and that will likely be more severe than what USDA will predict.

The financial losses to U.S. cattle producers will likely be severe if the United States allows OTM Canadian cattle and beef into the U.S. market while most export markets remain closed. The USDA grossly underestimated the negative financial impact that actually occurred to U.S. cattle producers following the 2005 resumption of Canadian cattle imports. The USDA underestimated the price decline that U.S. producers experienced in the domestic fed cattle market by a factor of nearly three. Domestic fed cattle prices, which USDA predicted would fall by as much as \$6.05 per cwt.,²⁹ actually fell by \$17.40 per cwt. during the 5-month period from December 2005 through May 2006. Mandatory country-of-origin labeling must be implemented in the United States so both domestic and international consumers can differentiate beef produced exclusively from U.S. cattle from beef produced from Canadian cattle, before any further relaxation of current U.S. import standards is even considered.

7. The U.S. should not relax its standards on imports from Canada without an evaluation of the health and safety risks and economic impact of OTM beef and without evaluations that combine OTM cattle and beef imports.

The risks from OTM beef imports were not properly evaluated in either the 2003 or 2004 risk analyses, and the 2005 delay on OTM beef imports posted in the *Federal Register* does not include a risk analysis based on the new findings of multiple cattle with BSE born after Canada's ban on meat and bone meal. Also, there is concern that the risk analysis of OTM beef and OTM cattle, when combined, will be much higher than separate analyses. That would also be the case if OTM beef and cattle are combined in an economic impact analysis.

Conclusion

For the reasons described above, the USDA's proposed OTM Rule is premature and should be immediately withdrawn. It is inconsistent with the applied practices in other BSE-affected countries; it is inconsistent with OIE standards; and it does not contribute to any cohesive, comprehensive U.S. strategy to restore lost markets,

build new markets, fully protect animal health, and support consumer confidence in the safety of U.S. beef.

R-CALF USA respectfully requests that Congress take steps to cause the immediate withdrawal of the OTM Rule as well as steps to ensure the immediate development of a comprehensive BSE protection strategy and enforcement of the Congressional mandate to prevent the introduction of BSE into the United States.

I sincerely appreciate this opportunity to share R-CALF USA's views with you on this important issue and I would be happy to answer any questions that you may have.

ENDNOTES

¹Table 5, Total U.S. Beef and Veal Exports, Red Meat Yearbook (94006), U.S. Department of Agriculture, Economic Research Service, available at <http://usda.mannlib.cornell.edu/MannUsda/viewDocumentInfo.do?documentID=1354>.

²See Cumulative U.S. Meat and Livestock Trade, Livestock and Meat Trade Data, Livestock, Dairy, and Poultry Outlook Tables, U.S. Department of Agriculture, Economic Research Service, available at <http://www.ers.usda.gov/Data/MeatTrade/Data/AnnualLivestockTable.xls>; see also Table 5, Total U.S. Beef and Veal Exports, Red Meat Yearbook (94006), U.S. Department of Agriculture, Economic Research Service, available at <http://usda.mannlib.cornell.edu/MannUsda/viewDocumentInfo.do?documentID=1354>.

³Terrestrial Animal Health Code—2006, World Organization for Animal Health (OIE), at Article 2.3.13.1. (1)(g).

⁴See Bovine Spongiform Encephalopathy, Minimal-Risk Regions and Importation of Commodities; Final Rule and Notice, *Federal Register*, Vol. 70, January 4, 2005, at 460–553.

⁵*Choice Beef Values and Spreads and the All-Fresh Retail Value*, USDA, Economic Research Service, available at <http://www.ers.usda.gov/Data/meatpricespreads/Data/beef.xls>, downloaded on December 19, 2006.

⁶High Plains Cattle Feeding Simulator, United States Department of Agriculture, Economic Research Service, available at <http://www.ers.usda.gov/Publications/LDP/xlstables/High%20Plains%20Cattle%20Feeding%20simulator%20Nov06%20R.xls>.

⁷See Bovine Spongiform Encephalopathy; Minimal-Risk Regions; Importation of Live Bovines and Products Derived from Bovines; Proposed Rule, *Federal Register*, Vol. 72, No. 5, at 1102–1129, hereafter OTM Rule.

⁸*Federal Register*, Vol. 70, No. 2, Final Rule, January 4, 2005, at 475.

⁹See Report on the Monitoring and Testing of Ruminants for the Presence of Transmissible Spongiform Encephalopathy (TSE) in the EU in 2005, European Commission, ISSN–583X, at 5.

¹⁰Table B5, Total Positive Cases Per Number of Cattle Tested or Present in the Adult Cattle Population (>24 months of age), Report on the Monitoring and Testing of Ruminants for the Presence of Transmissible Spongiform Encephalopathy (TSE) in the EU in 2005, European Commission, ISSN: 1725–583X, June 20, 2006, at 17. (France, with an adult cattle population of over 10 million cattle tested over 2.5 million head and detected 31 positive BSE cases in 2005; the Netherlands, with an adult cattle population of only 1.7 million cattle tested over 517,000 cattle and detected 3 positive BSE cases in 2005. In contrast, Canada with an adult cattle population of approximately 6 million cattle tested fewer than 60,000 cattle and detected 2 positive BSE cases in 2005; in 2006, after again testing fewer than 60,000 cattle, Canada detected 5 positive BSE cases.)

¹¹The TSE Roadmap, European Commission, Brussels, COM(2005 322 Final, July 15, 2005, at 7, 8: “The detection of BSE in healthy slaughtered cattle in 2000 indicated the need for active monitoring which was introduced in the whole community in the beginning of 2001. The active monitoring programme became fully operation in July 2001 and still includes: The testing of all risk animals over 24 months of age (fallen stock, emergency slaughtered animals and animals with clinical signs at ante-mortem inspection); The testing of all healthy slaughtered bovine animals above 30 months of age (a total of 10 million cattle per year).”

¹²Table B12, Testing on Healthy Slaughtered Bovine Animals, Report on the Monitoring and Testing of Ruminants for the Presence of Transmissible Spongiform Encephalopathy (TSE) in the EU in 2005, European Commission, ISSN: 1725–583X, June 20, 2006, at 26.

¹³See Cumulative U.S. Livestock and Meat Trade, Livestock, Dairy, and Poultry Outlook Report, U.S. Department of Agriculture, Economic Research Service, March 23, 2004, available at <http://usda.mannlib.cornell.edu/usda/ers/LDP-M/|2000s/2004/LDP-M-03-23-2004.pdf>.

¹⁴Use of Cattle Legally Imported from Canada Within the EV Program for the Republic of Korea, U.S. Department of Agriculture, Agricultural Marketing Service, August 29, 2006, available at <http://www.ams.usda.gov/lsg/arc/KoreaCanadianCattle.pdf>.

¹⁵Beijing Confiscates Canadian Beef on Fear of Mad Cow Disease, ChinaDaily/Xinhua News Service, Sunday—February 18, 2007.

¹⁶Terrestrial Animal Health Code—2006, Article 2.3.13.13 (1), (2), (3).

¹⁷See Importation of Certain Commodities from BSE Minimal-Risk Regions (Canada), Environmental Assessment, October 27, 2006, U.S. Department of Agriculture, Animal and Plant Health Inspection Service, at 7. (Both FSIS and FDA have implemented regulations that prohibit the use of SRMs in human food and other products, including dietary supplements and cosmetics.)

¹⁸See Completed Investigations, Canadian Food Inspection Agency, available at <http://www.inspection.gc.ca/english/anima/heasan/disemala/bseesb/comenge.shtml>.

¹⁹CFIA: Latest Canadian BSE Case Likely Born in 2000, Dow Jones Newswires, *CattleNetwork Today*, February 8, 2007.

²⁰Terrestrial Animal Health Code—2006, OIE, Article 2.3.13.11. (2)(a).

²¹See *Terrestrial Animal Health Code—2006, OIE*, at Article 2.3.13.8.

²²See *id.* at Article 2.3.13.7.

²³See *Surveillance for Bovine Spongiform Encephalopathy*, Terrestrial Animal Health Code—OIE—2006, Appendix 3.8.4.1, Tables 1 and 2.

²⁴See BSE Enhanced Surveillance Program, Canadian Food Inspection Agency, available at <http://www.inspection.gc.ca/english/anima/heasan/disemala/bseesb/surv/surve.shtml#num>.

²⁵BSE Testing Results, U.S. Department of Agriculture, Animal and Plant Health Inspection Service, September 1, 2006, available at http://www.aphis.usda.gov/lpa/issues/bse_testing/test_results.html; See also BSE Ongoing Surveillance Program, U.S. Department of Agriculture, Animal and Plant Health Inspection Service, available at http://www.aphis.usda.gov/newsroom/hot_issues/bse/surveillance/ongoing_surv_results.shtml.

²⁶See, e.g., *Federal Register*, Vol. 62, December 16, 1997, at 65747, 65748.

²⁷*Livestock and Poultry: World Markets and Trade*, U.S. Department of Agriculture, Foreign Agricultural Service, Circular Series, DL&P 2-06, October 2006, available at <http://www.fas.usda.gov/dlp/circular/2006/2006%20Annual/Livestock&Poultry.pdf>.

²⁸Terrestrial Animal Health Code—2006, OIE, Article 2.3.13.3. (3)(b).

²⁹Economic Analysis Final Rule, Bovine Spongiform Encephalopathy: Minimal-Risk Regions and Importation of Commodities, U.S. Department of Agriculture, Animal and Plant Health Inspection Services, December 20, 2004, at 24.

Senator DORGAN. Mr. McDonnell, thank you very much. And, finally, we will hear from Mr. Elwood “Woody” Barth, who is here representing the North Dakota Farmers Union, and we appreciate you being here. You may proceed.

**STATEMENT OF ELWOOD “WOODY” BARTH, STATE
SECRETARY, NORTH DAKOTA FARMERS UNION**

Mr. BARTH. Thank you, Senator Dorgan. It is good to be here. For the record, my name is Woody Barth. I am a livestock producer from Solen, North Dakota, and also serve as State Secretary of the North Dakota Farmers Union, the state’s largest general farm organization.

Today I am here representing the members of the North Dakota Farmers Union, and I thank you for the opportunity to appear before you and focusing on the United States Department of Agriculture’s proposed rules.

USDA proposed rules that allow for liberalized importation of Canadian beef and cattle do not address the issues of safety of our Nation’s producers. The United States cattle producers continue to have no assurances that Canada has its BSE problem under control.

The rules will call for allowed importation of beef and cattle of all ages, including animals born after March 1, 1999. Live animals must have an ID plus a permanent tattoo that will allow Canadian officials to certify the age of animals. These rules have no clarification as to what will happen if another BSE case is found as relates to our trading partners, and no explanation of how USDA plans to separate Canadian beef from U.S. beef for export.

Just 2 weeks ago, Canada confirmed its ninth case, possibly the tenth case if you count the animal in Washington State, for BSE positive. The recent animal was six-and-a-half years old, which falls within USDA's proposed age limit to expand beef and cattle trade with Canada.

Just recently, Canadian cattle entered the United States without government-required health papers or identification tags in Washington State. Because of these events, we believe American producers and consumers deserve better than what USDA is proposing.

North Dakota Farmers Union believes livestock health is critical to production agriculture and our Nation's ability to provide a safe food supply. We believe the following items need to be addressed prior to expanding beef and cattle trade with Canada:

First of all, Canadian cattle need to be proved and verified that their cattle herd and beef products are BSE-free.

Canada must prove and verify 100 percent compliance with the ruminant feed ban.

The U.S. international beef export markets are firmly reestablished first, and we also call for mandatory country-of-origin labeling to be fully implemented before this rule takes effect.

We call for increased level of surveillance, quarantine, and inspection and testing at all U.S.-Canadian border locations.

Impose similar guarantees concerning livestock feed production from all trading partners and require Canada to allow the U.S. to perform random investigations and testing of their production facilities as a condition of market access.

Rapid-test technology is provided to all domestic slaughtering facilities to provide stability to the cattle market and another layer of confidence to the American consuming public.

We also call for a guaranteed economic safety net for American producers if this importation of cattle and beef products from BSE-positive countries negatively impacts domestic profitability here in America.

In the interest of U.S. producers and consumers, USDA should withdraw the proposed rule to expand Canadian beef and cattle imports. The Department should also move to immediately implement mandatory country-of-origin labeling, which would allow consumers to make an informed choice of where their food comes from.

With that, Senator, I would thank you for being here, and I would answer any questions.

[The prepared statement of Mr. Barth follows:]

PREPARED STATEMENT OF ELWOOD "WOODY" BARTH, STATE SECRETARY, NORTH DAKOTA FARMERS UNION

My name is Elwood "Woody" Barth. I am a livestock producer from Solen, North Dakota, and also serve as the State Secretary of the North Dakota Farmers Union,

the state's largest general farm organization. Today I am here representing the members of North Dakota Farmers Union. Thank you for the opportunity to appear before you and for focusing on the United States Department of Agriculture (USDA) proposed rules.

The USDA's proposed rules that allow for liberalized importation of Canadian beef/cattle do not address the issues of safety for our Nation's producers. United States cattle producers continue to have no assurance that Canada has its BSE problem under control.

The rules will call for allowed importation of beef/cattle of all ages, including animals born after March 1, 1999. Live animals must have an ID plus a permanent tattoo that will allow Canadian officials to certify age of animals. These rules have no clarification as to what will happen if another BSE case is found as it relates to our trading partners, and no explanation of how USDA plans to separate Canadian beef from U.S. beef for export.

Just 2 weeks ago, Canada confirmed its ninth BSE-positive case. The recent animal was 6.5 years old, which falls within USDA's proposed age limit to expand beef/cattle trade with Canada. Just recently, Canadian cattle entered the United States without government-required health papers or identification tags in Washington State. Because of these events, we believe American producers and consumers deserve better than what USDA is proposing.

North Dakota Farmers Union believes livestock health is critical to production agriculture and our Nation's ability to provide a safe food supply. We believe the following should be addressed prior to expanding beef/cattle trade with Canada:

- Canada can prove/verify their cattle herd and beef products are BSE-free;
- Canada can prove/verify 100 percent compliance with the ruminant feed ban;
- U.S. international beef export markets are firmly reestablished;
- Mandatory country-of-origin labeling is fully implemented;
- Increased level of surveillance, quarantine, inspection and testing at all U.S.-Canadian border locations;
- Impose similar guarantees concerning livestock feed production from all trading partners and require Canada to allow the U.S. to perform random investigations and testing of their production facilities as a condition of market access;
- Rapid-test technology is provided to all domestic slaughtering facilities to provide stability to the cattle market, and another layer of confidence for the American consuming public; and
- A guaranteed economic safety net for American producers if the importation of cattle and beef products from BSE-positive countries negatively impacts domestic profitability.

In the interest of U.S. producers and consumers, USDA should withdraw the proposed rule to expand Canadian beef and cattle imports. The department should also move to immediately implement mandatory country-of-origin labeling which would allow consumers to make an informed choice of where their food comes from.

Senator DORGAN. Mr. Barth, thank you very much. Let me ask questions first of Dr. DeHaven and then perhaps others, as well. Dr. DeHaven, it has seemed to me that the Secretary of Agriculture has been more than anxious to open this market up, almost like a cattle drive from Canada. You know, "I'm ready to go and, Katie, bar the door." And I don't understand that. I would expect an approach that has the USDA saying, "look, we're going to be cautious, careful. First and foremost we're going to protect our domestic industry to make certain that we're not inheriting risks that we don't now have."

Mr. McDonnell said you don't minimize risks by increasing exposure, which I agree with. So I'm trying to understand this, and let me ask a number of questions. Under the proposed rule, USDA will allow in Canadian cattle as long as they were born after March 1, 1999. They implemented their feed ban in August 1997, so you allow 6 months after the feed ban and give it a chance to work

through the system. Then you add an additional year for good measure, and so that becomes the date.

However, looking at the timeline of the BSE cases, four of Canada's cases have been found in animals born after the feed ban. Three of them were in animals born after March 1, 1999. So why does the USDA think it's appropriate and safe to import cattle born after March 1, 1999, given that one-third of the BSE cases were born after that date? Does that not give USDA some pause?

Dr. DEHAVEN. Thank you, Senator. Let me first reflect on your initial comment about Secretary Johanns and his interest. The Secretary has been very clear from the beginning that our trade policies need to be based on sound science and consistency with the international standards. So we believe that, in fact, our initial minimum-risk rule and this proposal, in fact, are in keeping with the science as we know it today, and it is evolving rapidly, and, second, will get much more consistency with the international standards than what we currently have.

With regard to the March 1, 1999, feed ban, let me just clarify slightly from what you indicated in terms of how we came to that date. The United States and Canada both implemented almost identical feed bans at the same time, August 1997.

In the risk assessment that we did to support this rule, we estimated that it would take approximately 6 months for the Canadians to really implement that rule and then an additional year for feed that might be in their system to clear the system, and so came up with a date some 18 months after their initial feed ban was implemented.

It's important when discussing the potential risk pathway, the way that BSE might find its way into the United States—excuse me, into the United States from Canada, that we not take any single-risk mitigation factor and consider it by itself, but rather consider the entire risk pathway and all of the mitigations along that pathway that would mitigate any risk that would be posed to the United States from Canada from their cattle or from cattle products.

Senator DORGAN. I'll let you continue, but let me ask a question about this issue of risk. The Department provided the minimal-risk status to Canada based on what you say were international guidelines; is that correct?

Dr. DEHAVEN. Consistent with the international standards, yes.

Senator DORGAN. Let me ask you a question. What if before May of this year we find an 11th case of BSE in Canadian herds? Is the Department at that point going to withdraw the minimum-risk assessment?

Dr. DEHAVEN. Senator Dorgan, I assume that you're referring to the quote on the chart that you referred me to, and I would just go back in history. That quote is from January 3, 2005, and it was consistent with what was at the time—

Senator DORGAN. Let's put that quote up, if we can.

Dr. DEHAVEN. That quote was—at the time it was stated was consistent with the OIE standards as they existed. The OIE at the time categorized countries in one of five categories. Free, provisionally free, minimum risk—minimal-risk, as would indicate on that

chart, moderate risk, or high risk. A five-category scheme, if you will.

In May of 2005, some 5 months after that quote, the OIE changed their country categorization system, got away from comparing cattle populations and the number of positive cases based on that population, and went to a three-categorization scheme where the country is designated as either negligible risk, controlled risk, or undetermined risk, and instead of looking at just prevalence, looking again at that entire risk pathway. What are all of the measures that a country has in place to mitigate the animal health and public health risk of BSE?

Senator DORGAN. I want to know whether the USDA has evaluated the difference between your evaluation of sound science and our trading partners' determination of what sound science means to them. It seems to me that our continued trade gap somehow represents a difference in judgment of our trading partners' evaluation of sound science and health risk *versus* USDA's evaluation.

I'm wondering whether this plays any role in your consideration, or is it irrelevant? Because this gets at the root of what this issue means to our industry and our domestic producers, and it has everything to do with what our trading partners are interested in purchasing. You can only sell what people are willing to buy. You might say that's an irrational gap, but you can't say it doesn't exist.

My question is: What role does USDA play in evaluating whether that gap means anything to the USDA or to this country?

Dr. DEHAVEN. Senator, I don't mean to suggest that the Department is ignoring the economics and the chart as you've presented, but looking at a longer-term picture, if you'll recall, if we go back to May of 2003, there were really two standards: Countries that were affected by BSE and the rest of the world cut off all beef and beef products and animals from those countries, and then countries that were not affected and there were no restrictions. And we were part of that problem, not consistent with the international standards.

Since May of 2003 we have worked to make our trade policies, our regulations consistent with the science and consistent with international standards. If, in fact, we are successful in doing so both domestically, then we are in a better position of convincing trading partners to likewise use the science and use the OIE standards as a basis for determining their trade policies.

I have not been directly involved in the trade discussions, but I have had discussions with a number of countries on BSE and their ongoing restrictions of beef and beef products, and as we hammer those countries to accept our beef and beef products based on international standards, their first response is yes, but you need to get your policies in the United States consistent with the science and then come talk to us, because, in fact, our regulations have not been. This rule will go a long way toward making our standards consistent with—

Senator DORGAN. I don't think we need any lectures from any of our trading partners about our standards. The fact is we have the best supply of beef in the world, the safest supply of beef in the world, and we don't need anybody lecturing us about that.

But my question here is about a gap. It seems to me the market has made a judgment.

You say this is sound science and this gap seems to play no role. I'm just saying, Dr. DeHaven, if this plays no role, then we're in big trouble because this has to play a significant role in the decisions we're making.

Perception is everything. Others around the world perceive that there is a problem. Let me refer you to the *Chicago Tribune* the day before yesterday, which you're probably familiar with. The *Chicago Tribune* headline, "Canadian cattle slip past USDA safeguards. Critics fear problems could lead to mad cow," and it's a story about cattle coming in without identification, without papers, and so on, slipping through the system, or as one of my friends called it, holes in the dike.

So, you know, my concern here is we're ignoring the obvious, and I'm trying to understand the urgency the Secretary sees in rushing to make this decision.

We have a comment period that is still open, but when you look at the statements of the Secretary of Agriculture, I'm hard pressed to see that any comments are going to do anything to change a mind that's already closed on this issue. Disabuse me of that, if you can.

Dr. DEHAVEN. Thank you, Senator. And let me first make it very evident and clear that the Secretary is acutely aware of the economic impact of the current situation indeed. We have sent countless trade teams around the world to reopen the markets, to push the science, and, in fact, we have been largely successful in terms of reopening those markets with—

Senator DORGAN. That's not true. Look at that chart.

Dr. DEHAVEN. Indeed.

Senator DORGAN. I'm sorry to interrupt you, but this is not true.

Dr. DEHAVEN. I'm not suggesting that we don't have a ways to go. In fact, it's work in progress. My point being the economics of this situation are certainly not lost on the Secretary or anyone in the Administration.

Senator DORGAN. But they don't play a role in this judgment of whether to open the market; is that correct?

Dr. DEHAVEN. In fact they do, and an economic impact analysis was part of the rule as it was published as a proposal. You know, I suspect that economists are much like lawyers. If you have six of them in the room, you'll have six different opinions. We value and respect the opinion of Dr. Keith Collins, our Chief Economist, and his staff, who have done a thorough economic analysis of this rule. Here again, that's part of this process where we would welcome comments on the economic impact analysis.

Dr. Collins and his staff would suggest that this rule taken by itself, not ignoring the situation, but in fact putting into context what this rule would do, the overall economic impact on the United States would be favorable. Clearly there would be a reduction—

Senator DORGAN. You said what? Tell me again.

Dr. DEHAVEN. Would be a favorable outcome in the long term, recognizing that, in fact, there would be lower prices in cull cattle in the United States, but in terms of the impact on fed cattle, feeder cattle and products from those animals, this rule would be—

would result in no change or even a slight increase to producers in this country.

Senator DORGAN. You know, I know Keith Collins, and I wish he had about a thousand head of cattle that he owned and then give his judgment. I used to teach a little economics myself, but I was able to overcome that. You know, I understand. You can get whatever you pay for from the economists, but I do think that there are several issues here that are important.

One is the fact that Canada has decided that it's going to revise its feed ban in order to make it more effective. That's my understanding; right? So Canada's taking steps to make it more effective. What's the implication of that? They've determined that the feed ban needs to be made more effective because it is not effective at this point, or at least it is not completely effective. If that's the case, again, I don't understand the urgency and the rush by the Secretary to do this.

I'm going to ask some other questions and then I'll come back to you, Dr. DeHaven, if I might.

Commissioner Johnson, let me ask your assessment of USDA's evaluation of both the public health side of this and the State Veterinarian's evaluation of the prospect of additional cases coming in and its impact on the U.S. herd.

Mr. JOHNSON. Well, I don't know that I can answer the public health side of this. I mean, the statement has been made and I believe it to be accurate that we should not be fearful that this is going to increase the problem that we have, that it's going to make our beef less safe in this country. I think this is largely—as you indicate, it's about that economic gap and it's about how folks are perceiving this to be, and the result of that is that economic gap. If I can—

Senator DORGAN. But the perception—I'm asking about the perception of public health, and I think this is a very fine line. None of us want any American consumers to believe that we've got a problem here because we don't, but we could import a problem, and we don't want to be importing someone else's problem.

Mr. JOHNSON. Let me answer the question this way, Senator: I think USDA made a critical mistake a number of years ago when there was a small company by the name of Creekstone that was asking for the right to test every animal, and the reason they were asking for that right was because in Japan that is exactly what they were doing. They have a problem with BSE in Japan and so they tested every animal. That was what the consumers wanted, and so they wanted the same thing from us. If they were going to import beef from the U.S., they said, well, of course, but you need to test every animal. We refused to allow them that right.

And so certainly in the minds of the Japanese consumers there is a higher risk associated with importing beef that has not been tested where there's known to have been at least a case or several cases of BSE. Now that gets to the question of, you know, is there a—does the consumer believe there to be a risk? In America I don't think that's the case, but certainly in Japan it is.

Senator DORGAN. Dr. Keller, do you have anything to add to Dr. DeHaven's testimony today with respect to the standpoint of number of cases of BSE we might see and its impact?

Dr. KELLER. The only comment I'd like to add is that if we look at the science, we really have to look at where we're at with OIE guidelines, and we still have not been assigned a status by OIE as a country nor has Canada. If we would be what—I've seen Dr. DeHaven quoted recently saying that we might be a controlled-risk status country. In the Minimal Risk Rule 2 automatically we would not be in compliance or we would not be meeting those guidelines. Animals over 30 months of age, the SRMs—there's a list of them, I could read them to you—we should not be allowing those into this country. Minimal Risk Rule 2 does not address what would be required as a controlled-risk status country.

Senator DORGAN. So if we have additional cases of BSE that are imported into this country, which USDA says will happen—the question isn't whether, the question is how many—then that puts us in a more significant risk category?

Dr. KELLER. Absolutely. We cannot have it both ways. We've either got to do what Canada's doing or we don't let those older-age cattle in.

Senator DORGAN. And the consequences of that then are on this chart in terms of our trading partners' perception of our product; is that correct?

Dr. KELLER. Yes. Some of it's perception, some is reality, though. We cannot be at an unequal status.

Senator DORGAN. I understand that if you import risk, that's real. I understand that. And that has an impact on our trading partners' assessment of our product.

Dr. KELLER. Correct.

Senator DORGAN. And that gap is real, and gets back to Mr. McDonnell's statement that he put, I thought, in a very concise way. You don't minimize risk by increasing exposure. Mr. Huseth, you know, some economists, would take a look at you and say, you know what you are, you're just a protectionist. You want to keep everything out of here and the world has changed, get with it, free trade, open the borders, and do a little testing, but you know what, you're just protectionists. That's what some would argue. Not me, but some will argue that. So respond to that.

Mr. HUSETH. Senator, we probably are protectionists because we're protecting our own producers, protecting the product that we think is safe and that we do produce. So in a way we are protectionists, but we still are open minded enough to know about the free trade and what goes on in that arena.

Senator DORGAN. How important is country-of-origin labeling to you as a rancher?

Mr. HUSETH. Country-of-origin labeling to me, is very important. I think we need to look at that, and for our situation we can do that right now, if we want, start tagging and not wait for the government to go through their bureaucracy, but I think some of that has to be done. Seems to be a real holdup at your end of the participation in the government. They always come up with ideas but never have the solutions or the ways to get there, and I think that's a problem, and country-of-origin labeling is an important thing in our industry.

Senator DORGAN. Mr. McDonnell, you've missed the whole—they would say you've missed the whole world movement of free trade

and you're just coming here saying I want to protect my own economic interests. Anything wrong with that?

Mr. MCDONNELL. Well, thank you, first of all, for calling me a protectionist. That's what I would tell them. I'm not an isolationist, though. In fact, we have extended members of our family—one cousin's boy is over in Afghanistan today protecting this country. So I don't know if I deserve to be quite in that crowd, but thank you.

We participate in our own business very much in the international market with semen sales across the world. We're one of the largest, if not the largest, sellers of breeding bulls. We have more bulls and semen studs than anybody else in the market, so we're very active in it.

Establishing trade guidelines that are smart, that are fair, in this case that are responsible to consumers and producers is—could hardly be called protectionist. I call them responsible and fair practices, and, you know, it's so funny, Senator, every time we get into this debate, these folks don't seem to be able to debate us on the issues. It's like a bunch of little kids on a school ground, the first thing they do is go to name calling.

I'm very proud of what we've done. I'm very proud of what you've done.

Senator DORGAN. Thank you very much. Mr. Barth, the North Dakota Farmers Union has an official position on this issue. Does the National Farmers Union have a similar position?

Mr. BARTH. Thank you, Senator Dorgan. Yes, they do. They believe that there needs to be protection for the U.S. beef market; that the U.S. beef market needs to be protected; that we have a safe supply of food here and that needs to be protected. As you stated, we can't import a problem.

And also we call for mandatory country-of-origin labeling both on the North Dakota level and national level. We want that implemented immediately. As you said, there have been many delays in that process of implementing country-of-origin labeling.

Our history in North Dakota and the National goes back to the early Nineties in supporting country-of-origin labeling. We have a long history there, and we believed that would be a part of the solution before we do open up the border to Canadian trade of animals over 30 months of age.

Senator DORGAN. Dr. DeHaven, we just talked a bit about importing risk. Is it USDA's contention that opening this market will not import risk, or is it your understanding that there will be some risk imported as a result of this?

Dr. DEHAVEN. Senator, we're characterizing the risk as negligible, again, looking at having done a thorough science-based risk analysis consistent with the OIE standards, looking at the entire pathway and looking at the mitigations that are in place along that entire pathway. If you'll permit me, I'll go through some of those steps that we have considered and those risk mitigation measures that are in place.

Senator DORGAN. I certainly will permit that. I'd also like you to comment, as well, on Canada's tightening of their feed standards and whether you saw that as evidence that the current feed stand-

ards were inadequate, and if so, did that play a role in your judgment?

Dr. DEHAVEN. Certainly. Our risk assessment of the Canadian situation and the risk that it would present to the United States begins with a prevalence estimate. The Canadians have implemented an enhanced BSE testing program much like what we carried out for 2 years beginning in June of 2004.

They have tested a comparable—in fact, based on percentage of—relative percentage of adult cattle populations, I think they've actually exceeded the number of high-risk animals that they tested. We used the exact same methodology to determine the prevalence of BSE in the Canadian cattle herd that we used domestically based on our testing program to determine our prevalence.

Senator DORGAN. Dr. DeHaven, I'm going to apologize for interrupting you, but I want to try to understand this as you go through it, and I think those who have come here would like to understand it, as well. You're talking about prevalence. I want to ask the question: Is BSE more prevalent in Canada than in the U.S.? If prevalence is a standard, based on what we know and based on existing cases, is it more prevalent in Canada than the U.S.?

Dr. DEHAVEN. We estimate the prevalence in Canada in their adult cattle population to be 6.8 positive animals per ten million adult cattle. That's somewhere less than one in a million. Looking at the assessment that we did and prevalence estimate that we did for the United States, we estimated it to be somewhat less than one in a million. So they are certainly in the same ballpark based on extensive surveillance programs in both countries.

Senator DORGAN. But the answer is if you start with the first point being prevalence, currently what we understand is there's a greater prevalence of BSE cases in Canada than in the U.S.?

Dr. DEHAVEN. I can't say that, Senator.

Senator DORGAN. I thought you just said that.

Dr. DEHAVEN. No, no. I said that based on the estimate that we've done, which uses the enhanced testing surveillance programs in both countries—

Senator DORGAN. How about based on what we know in terms of confirmed cases?

Dr. DEHAVEN. Based on confirmed cases, as well as the population of negative tests that we have, we're estimating the prevalence in Canada to be 6.8 positive animals, less than seven animals per ten million adult cattle. That's somewhat less than one positive animal in a million. When we did the assessment for the U.S. national herd, we estimated the prevalence at somewhat less than one in a million.

Senator DORGAN. OK. We're just discussing different subjects because I'm trying to ask the question of the documented cases of BSE in the two markets. There's a greater prevalence of documented cases in Canada than in the U.S. You're describing a testing regime. That's not what I was asking, but why don't you proceed to the second point.

Dr. DEHAVEN. Well, I will concede, Senator, that we have found two indigenous cases in the United States with all the testing we have done. The Canadians have found ten indigenous or ten native-born cases there. I'm talking about what you can infer from a sta-

tistical basis from that testing or from the testing programs in both countries.

Senator DORGAN. But if I'm a customer, I look at the United States and Canada and what I see is more cases of BSE being disclosed in Canada than the United States; is that correct?

Dr. DEHAVEN. There has been, yes, sir. But I think for the entire picture you need to look at the statistical analysis of all of the data rather than drawing conclusions simply on the raw numbers of animals that have tested positive.

Senator DORGAN. I appreciate USDA's advice to the Japanese and the Koreans and others, but I'm not sure that's the way they will evaluate that. I think they will look at what they know to be the case in the United States and Canada based on what we have discovered in both countries. But proceed to the second point.

Dr. DEHAVEN. OK. Again, Senator, I'm discussing the various measures and issues that we considered in developing that risk analysis and upon which this rule was based. First was the prevalence, and while we can argue about the finite number of cases that might be in either country, needless to say 6.8 positive animals out of 10 million adult animals is a very low prevalence of the disease.

Second, we did look at their feed ban, and just to clarify one point, our risk assessment was based on the feed ban that currently is in place in Canada, not the enhanced feed ban that they plan on imposing. So our determination that there is negligible risk is based on their current feed ban, and their enhancement of that feed ban can only improve the overall situation, continue to reduce whatever risk there might be.

Senator DORGAN. Let me ask a question about that, because if the Canadians have judged their feed ban needs to be tightened, they obviously think something is deficient with respect to what they were doing. Or at least that it should and could be improved. Did you make that same judgment when you looked at the Canadian feed ban?

Dr. DEHAVEN. We haven't looked at the enhanced feed ban. We conducted our risk assessment in the context of their existing feed ban. I think this goes without saying, though, that the enhancements that they're talking about will accelerate the time that any infectivity in the Canadian feed will be eliminated from the national feed supply.

Senator DORGAN. But you gave them minimum-risk status at a time when they had a feed ban which they now believe needs to be strengthened. Did you reach that same judgment as you were giving them a minimum status?

Dr. DEHAVEN. Again, we have based that minimum region categorization on the existing feed ban, not the enhancement.

Senator DORGAN. And you felt the existing feed ban was fine and adequate?

Dr. DEHAVEN. Correct.

Senator DORGAN. And the Canadians apparently think it was inadequate because they now are making changes to strengthen it.

Dr. DEHAVEN. I think the Canadians are looking at a number of factors, not the least of which is a cost benefit analysis. What is the cost of enhancing their feed ban compared to the potential return that they might realize in increased export markets by en-

hancing that feed ban? So I'm not sure that it's necessarily based totally on risk. It's also looking at the cost benefit and long-term—what that enhanced feed ban might do in terms of increasing their export markets.

Senator DORGAN. So, therefore, the Canadians might be doing this based on the perception of risk rather than risk itself, which gets back to the entire point that I've been making this morning. This is all about perception, isn't it, in terms of people who are interested in purchasing a product from us who have a perception based on the prevalence of cases that have been documented in Canada *versus* the U.S.?

Dr. DEHAVEN. Senator, I don't think we could have this discussion without considering the biological sciences, the political science, and the economic science of the whole situation. We are doing so and I'm sure the Canadians are doing likewise.

It really comes down to a cost benefit analysis on their enhanced feed ban. If there is infectivity in the Canadian feed supply, and there's evidence that there is, increasing the removal of SRMs, enhancing that feed ban will accelerate the time period that it takes for them to totally eliminate that infectivity from their feed.

We would estimate that just having the ruminant-to-ruminant feed ban in place that they have, like we have in the U.S., will eliminate infectivity from either country's feed supply. Their enhancements will accelerate that process.

Senator DORGAN. But the point is they didn't have to improve their feed ban or make changes with respect to the feed standard. They didn't have to do that because you would already allow under the current system 1.3-million head of Canadian cattle to come into the country in 2007.

Dr. DEHAVEN. Well, I would just remind you, Senator, this is a proposed rule. I think these are all relevant comments, but your premise is accurate. We based the proposed rule on their existing feed ban, not the enhancements that they plan putting in place in July of this year.

Senator DORGAN. So the Canadians weren't worried about our perception because USDA's perception was that their feed ban was fine.

Dr. DEHAVEN. Well, in fact, we are not the only market for Canadian exports.

Senator DORGAN. But 1.3-million head is a pretty substantial market.

Dr. DEHAVEN. It is indeed. It is indeed. Continuing then with looking at the entire risk pathway, we first did a prevalence. We considered the feed ban that they had in place, which again is consistent with ours and has been in place for a similar period of time. Recognize that even if an animal is infected early in life, it does not represent a risk to either animal health or public health until just a few weeks before it develops clinical signs and then would be excluded from the feed supply, which gets to the Creekstone testing issue that is an entirely different discussion, but, in fact, an animal that is infected will not test positive, will show no clinical signs, and represents no animal health or public health risk until just a matter of a few weeks before it develops clinical signs and then will die.

So part of the analysis is recognizing that there may be infected animals in Canada. Most likely they would be imported into the United States well before the age that they would develop clinical signs, well before they would represent any infectivity to our cattle herd or to public health in the United States.

So, again, you're taking that prevalence of infected animals and further reducing the risk and that there's a narrow window of time when even an infected animal represents risk to animal health or public health.

Second, when the animal comes across the border, we are going to remove those specified risk materials, tonsils and that distal ileum from animals of all ages, and the other SRMs for animals that are over 30 months of age. So we have, in addition to the SRM removal, various slaughtering practices in place that will minimize that risk, ensuring that practices to recover some of the meat don't include, for example, nervous tissue, ensuring that stunning isn't used or a pneumatic device, which could put nervous tissue into the meat, as well. So those practices are in place to protect public health.

On the animal health side it would require—here again, an animal that's infected that's in that narrow infected window to get into a rendering plant. That rendering plant in the U.S. is going to apply procedures, such as heat and pressure, that will reduce any infectivity, and then on top of that we have a ruminant-to-ruminant feed ban. So even if there is infectivity in that feed, it shouldn't be fed to susceptible animals in the United States.

All of those breaches would have to occur in the United States to represent a risk for a positive animal. If all of those safeguards were breached and you did end up with an infected animal in the United States, I would just remind you that that animal, when it goes to slaughter, is going to be subjected to the same SRM removal and slaughtering practices. Its tissues are going to be subjected to the feed ban and shouldn't end up in animal feed.

So, again, we are not looking at a single issue, such as the effectiveness of the feed ban, to mitigate risk. We're looking at the entire risk pathway and in doing so have determined that the risk to the United States from this rule would be negligible.

Senator DORGAN. But, again, that ignores that risk, which is perception. And the other thing I don't understand is we're talking about all these dates and your scientific analysis. One-third of the BSE cases that have now been discovered are cases in cattle that were born after March 1, 1999, long after the feed ban went into effect.

Dr. DEHAVEN. Mr. Chairman, excuse me for interrupting. No one is ignoring that trade gap. It is real. The Secretary understands it acutely. Everyone in the Department understands that trade gap, and we are working mightily to overcome that. What we are saying—and this is subject to your comments and we would welcome them—is that the impact of this rule will be negligible on that gap. It's not going to make that gap worse.

Senator DORGAN. Dr. DeHaven, the Secretary is ignoring that gap. That's not speculation. He is ignoring that gap by trotting out this rule. He's ignored that gap, and the fact is there is no economist in the world that will convince me that this rule and what you

intend to do with respect to the import of these cattle is inconsequential to that gap. I mean, that represents a very substantial economic injury, and I understand what's happening there. That has to be a part of the evaluation, and again I come back to the point, I don't understand the Secretary's urgency here. He has seemed so anxious to get this done. Well, for whom? Why? I don't understand it.

And I do think with due respect you've come here to make the case of why you have done what you've done leading up to the end of the comment period, but frankly, I don't think the explanation holds water. I just do not.

I described the size of this industry to our country. I described what we have done over a long period of time to try to make certain the world knows that we have the safest beef supply in the world, and I do not understand why we would increase our exposure, and I think the evidence is quite clear. We'll increase our exposure by rushing in this circumstance.

The country-of-origin labeling is very important, and I'm going to find a way to introduce something here very soon in the Senate that will try to prevent USDA from implementing this new rule prior to implementation of country-of-origin labeling in this country. At the very minimum—that ought to be the first step. There ought to be country-of-origin labeling before we even whisper about this sort of move, and yet the Secretary has been so anxious to move so quickly.

So, Dr. DeHaven, you are someone with a scientific background, you're a public servant. I appreciate your being here. We have very strong disagreements, and I think you and the Secretary know there's great anxiety out here in the country where people are trying to make a living about what has happened, and this chart shows it in a very dramatic way. What has happened is very consequential.

Let me thank our witnesses for being here and for your entire statements. I know you've summarized. Your entire statements will be a part of the permanent records of the Commerce Subcommittee hearing. Let me ask you to go ahead and depart from the table, and I'm going to ask others who may wish to make a comment to come to the open mike so that they can contribute, as well, and I thank all six of you for being here.

State Rep. Rod Froelich had asked to speak, and I believe he has introduced some legislation in the—is that right, in the state legislature, Rod?

**STATEMENT OF HON. ROD FROELICH, REPRESENTATIVE
(DISTRICT 31), STATE OF NORTH DAKOTA LEGISLATURE**

Representative FROELICH. Yes, Senator.

Senator Dorgan, I'd like to conclude this by just giving a little history. Senator Dorgan and guests, for the record, my name is Rod Froelich. My family has been ranching in Sioux County for over 80 years. I have a 15-year-old grandson who will be the fifth-generation rancher.

Senator, as you well know, I represent District 31, which includes all of Sioux County, all of Grant County, one-half of

Hettinger County, and a large portion of Morton County, which is comprised of 3,710,000 acres and approximately 130,000 beef cows.

My constituents have been through blizzards, floods, tornadoes, droughts, and fire. To say that they have been tested would be a huge understatement—not tested. Senator, as you know, we raise some of the finest crops, hardiest cattle, and some of the toughest people in the world. Of course, Senator, you are living testament to my words.

Senator, all it takes is a little common sense to understand that opening the border to Canadian cattle over 30 months of age at this time is not a very wise option. Canada is still experiencing cases of BSE. It is not in the best interest of the consumers or the producers of livestock to contemplate such actions until Canada has installed preventive measures to stop the prevalence of BSE in their country.

Our Far East trading partners have seriously restricted the importation of our livestock products, when, in fact, that cause of their concern is created by our Canadian trading partners.

Senator, until we have assurances by our trading partners that our commerce will not be hindered, the United States is obligated to protect its consumers and its producers.

Senator, there's been a resolution introduced in the House of Representatives, State of North Dakota, that has passed the House Agriculture Committee, it has passed the full House in a unanimous vote, and if I may, can I read it?

Senator DORGAN. How long is it?

Mr. FROELICH. Very short, sir.

Senator DORGAN. Proceed.

Mr. FROELICH. A Concurrent Resolution urging Congress not to allow the importation of Canadian cattle over 30 months of age.

Whereas, in 2003 the United States border was closed to Canadian cattle in response to findings of bovine spongiform encephalopathy, BSE, in cattle; and

Whereas, after the implementation of corrective measures, the border was reopened in 2005 to Canadian cattle less than 30 months of age; and

Whereas, many fear that consideration is now being given to the removal of the age restriction on Canadian cattle; and

Whereas, cattle over 30 months of age which originate in a BSE-affected country have an inherently higher risk of being infected with BSE; and

Whereas, there has been insufficient time since Canada's last case of BSE to determine whether the corrective measures implemented by Canada have been successful in preventing the spread of BSE; and

Whereas, the United States cannot afford any further reduction in its share of the global beef market stemming from the American products that contain beef from Canadian cattle; and

Whereas, the United States should not further relax its already lenient import standards until it is scientifically documented that BSE is no longer a risk in Canadian cattle and there is international acceptance of that conclusion, as demonstrated by a restoration of international markets—like you said, Senator—for American beef and beef products;

Now, therefore, be it resolved by the House of Representatives of North Dakota, the Senate Concurring Therein:

That the Sixtieth Legislative Assembly urges the Congress of the United States not to allow the importation of Canadian cattle over 30 months of age until there is scientific evidence, coupled with a sufficient time lapse, to ensure that any corrective measures implemented to counter the incidences of BSE in Canada have been successful; and

Be it further resolved, that the Secretary of State forward copies of this resolution to the United States Secretary of Agriculture and to each member of the North Dakota Congressional Delegation.

Thank you, Senator.

Senator DORGAN. Rod, thank you very much. We appreciate your being here.

STATEMENT OF ALLEN LUND, SECRETARY, INDEPENDENT BEEF ASSOCIATION OF NORTH DAKOTA (I-BAND); COW/CALF PRODUCER

Mr. LUND. Senator Dorgan, thanks for coming up. Thanks for giving us this opportunity. My name is Allen Lund. I'm a cow/calf producer from south central North Dakota. I'm also Secretary of the Independent Beef Association of North Dakota, and I'm speaking on behalf of our member policy.

I stand before you to voice my opposition of opening the Canadian border to live cattle and beef over the age of 30 months. If this is allowed to happen at this time, we are further lowering the United States livestock standards in an attempt to allow more foreign beef into this country.

Most of the countries that we exported beef to now have their borders closed to us because of a cow from the State of Washington that tested positive for BSE. It didn't seem to matter to our trading partners that this cow originated from Canada. Some of these countries would accept our beef again if we could guarantee sending them U.S. product.

The following safeguards need to be put in place before allowing over-30-month-age Canadian cattle and beef to enter this country.

Number one, we need the assurance that Canada is taking every possible precaution in eradicating BSE from their country. Some of the Canadian cattle that contracted BSE were born after Canada's feed ban was to have gone into effect. We have recently heard of more contaminated feed entering Canada's feed supply.

Number two, we need to regain the foreign markets that closed their doors to us before allowing further imports of cattle to enter this country. Failure to do so will result in a glut of beef causing price devastation to our domestic livestock industry.

Number three, mandatory country-of-origin labeling must be implemented. We will need this law to maintain and build confidence in U.S. beef for the domestic consumer, as well as the foreign consumer. It will also act as a marketing tool for the U.S. cattle producer.

To put it in a nutshell, it is too early to swing the doors wide open to the Canadian border. We need to put common sense ahead of politics and just say no at this time to Canadian cattle and beef over 30 months old.

Thank you.
 Senator DORGAN. Thank you very much.

**STATEMENT OF HERMAN SCHUMACHER, CO-FOUNDER,
 RANCHERS-CATTLEMEN ACTION LEGAL FUND, UNITED
 STOCKGROWERS OF AMERICA (R-CALF USA); CO-OWNER,
 HERREID LIVESTOCK MARKET**

Mr. SCHUMACHER. Senator Dorgan, Herman Schumacher from Herreid, South Dakota, but I grew up in Zeeland, North Dakota, so I'm a local.

Just a few short comments and maybe a question, but Dr. DeHaven mentioned that—in his statement that it would only affect the markets when opening the border to older-than-30-months, that it would only kind of affect the markets of the cull cows. Well, right now today I think cull cows in Canada, using U.S. dollars, are somewhere around 25 cents, and here they're in the low 40s. So that devastation—but, you know, there might be another chart you could use, Senator Dorgan, and that would be one that would take you back 20 years, the dairy buyout.

And at that time a million cows were slaughtered in the United States, and in the first week in running an auction we saw a decline in the feeder market of up to \$15 to \$20 a hundred. It took almost 2 years to get out of that deal. So that would be another economic model.

And going back to Keith Collins, who I know pretty well, I think he was appointed by the Reagan Administration, and he could surely come up with an economic model there that could probably serve you both.

Thank you.
 Senator DORGAN. All right. Thank you very much.

STATEMENT OF JAMES SCHMIDT, COW/CALF PRODUCER

Mr. SCHMIDT. Yes, Senator. James Schmidt. I'm a cow/calf producer from southeast of Bismarck. In the last week since the last cow that was tested—or last bull that was found with BSE in Canada, Mexico has dropped their rules now for opening their border to Canadian cattle. Beijing, China, is another one that has absolutely dropped their rules now for opening China.

My question is: USDA people, when they're there writing these rules for us, this affects us. If this market drops, there are a lot of them with the drought this year that are actually going to be out of business. But are they going to be out of a job if it backfires? No. They'll still have a job. And yet we're the ones that are going to suffer for their decisions. So that's all I have to say.

Senator DORGAN. Thank you very much.

STATEMENT OF JAMES E. KRUEGER, COW/CALF PRODUCER

Mr. KRUEGER. May I speak, Senator? I'm a little wobbly nowadays. You asked why. I can tell you why Secretary Johanns is so anxious to pass this. I was connected with Creekstone. We promised them several thousand cattle a year, a month. Ryan Meier called Johanns, wanted to do the BSE deal. He said, No. You guys are just a drop in the bucket. We've got to leave this to Tyson and Swift and the big boys. So right away I said that guy's no good.

And this whole American deal, since the Democrats woke up when we got some power back there, they're so determined to get this NAFTA, CAFTA and SHAFTA, I mean, they're going to do their best. So you fellows down there, the Democrats, got to be on their toes, because they're going to be pushing midnight legislation through. Thank you.

Senator DORGAN. Thank you.

**STATEMENT OF DWIGHT KELLER, VICE PRESIDENT,
AMERICAN SIMMENTAL ASSOCIATION; COW/CALF PRODUCER**

Mr. KELLER. Senator Dorgan, thank you for holding this hearing and giving us an opportunity to speak here. I'm Dwight Keller from south central North Dakota, cow/calf producer.

There's one issue, I guess, that I'd like to bring up to Dr. DeHaven that he did not address, and it's the pharmaceutical use of blood, and I know there's a big concern with the safety of the blood that is put in the medicine that is not—if we commingle the Canadian cattle with ours, the only really safe place left to get blood for the pharmaceutical industry is the United States and Australia, and so we are—and that issue has been totally avoided by USDA, and, you know, prions are—have been isolated in the blood.

And I'd also challenge you to look at some of the latest research that's been out in Europe that is being done on BSE, and that has not been considered in this rule, some of the latest stuff that's been done.

And the other point I would like to make is with the animal ID, they want to identify our animals so we can export them overseas, so we can maybe be able to access that market, but we're going to open our border and expect our people to eat all the Canadian beef and we're going to keep that here and expect our people to eat it, but Canada and Korea do not want it. So, I mean, what are we telling? That it's OK for our people to eat it, but they don't want it?

So I think there are a lot of concerns and we are way, way rushing into this, and I agree with Senator Dorgan that we need to step back and take a long look at this and we're way premature in making some of these decisions. Once it's done, it's too late to back up. We need to take some time and maybe it's 2 years, maybe it's 5 years before we make these decisions instead of rushing into them, and the economics is self-explanatory.

Thank you, Senator Dorgan.

Senator DORGAN. Dwight, thank you very much.

STATEMENT OF LARRY KINEV, COW/CALF PRODUCER

Mr. KINEV. I'm compelled to ask a question of Dr. DeHaven. He—he made comments back to history, and in 1997 when we started our feed ban, USDA said that we're going to do everything to prevent BSE in the United States that we possibly can, and our number one issue is going to be not to import beef from countries that have known cases of BSE, and somewhere along the line that changed. Didn't they say that? I read everything, and I must have read it in 14 different publications. Now we're opening it up.

And then you brought it up that somewhere along the line a cow is not horribly diseased until she shows signs of clinical symptoms.

If we take the blood sample in the slaughter plant and the cow shows the BSE agent in the blood, is she not a BSE cow that we have to report? Isn't that like saying your girlfriend's a little bit pregnant? A BSE cow is a BSE cow, and we're going to have to report them to the world.

Senator DORGAN. Dr. DeHaven, would you want to answer that point? Your name, sir?

Mr. KINEV. Larry Kinev, cow/calf operator from Dawson, North Dakota. And if we want to get any history before you start on this, I'd like to go back to December of 2003. When our Secretary of Agriculture announced that we had our first case of BSE in the United States, it was a Canadian cow and the Canadians were bragging about their tagging program that they have traced back. Did she have that Canadian tag in her hand when she reported the case of BSE in the United States? It never came out that it was a Canadian cow until it was leaked to the press. There was a gag order out in Washington. They didn't talk to anybody. Comment on that, too.

Senator DORGAN. Dr. DeHaven.

Dr. DEHAVEN. Could you clarify that last point? I'm not sure I understand it.

Mr. KINEV. Well, my point was that it seems like our USDA—and I have a little bit of mistrust in them—seemed like they were at that time protecting the Canadian industry more so than the United States industry.

Senator DORGAN. All right. Dr. DeHaven.

Dr. DEHAVEN. Thank you, Senator Dorgan. I believe there are about four issues to address in all of that. First going back to the historical perspective. First case of BSE was identified in the United Kingdom in 1986. We knew very little about the disease back at that point in time. So in 1989 we, in fact, started imposing import restrictions on any country that diagnosed a case of BSE. That was appropriate at the time because we knew very little about the disease, how it was transmitted, what tissues and what parts of an animal's carcass represents risk.

Someone indicated that we should be looking at the latest U.K. research. In fact, most of the research—because it's been such a big issue in U.K. and other parts of Europe, that's where most of the research is coming from, although we're adding now considerably to that research body of knowledge.

So, in fact, we have made a change and we've made changes to our import policy consistent with what we now know about the disease, what tissues represent a risk. We now know that it's primarily a disease of animals over 5 years of age, even though they may be infected in the first few months of life. So, in fact, we have made some changes because we know much more about the disease today than we did back in 1986 when it was first diagnosed.

In terms of clinical symptoms, in fact what is happening from a disease standpoint is the prion that is believed to cause the disease only starts accumulating in the nervous system tissues just a few weeks or few months before the animal develops clinical signs and dies.

So if you have an animal that, in fact, was infected in its first few months of life, up until that point when it develops clinical

signs, for the most part that animal represents no public health or animal health risk. The prion isn't in that carcass in any quantity to represent any risk. It's only in that latter part just before the animal develops clinical signs and then dies. That's when it represents a risk.

Senator DORGAN. Doctor, on that point, though, can I ask a question that was asked previously? That, nonetheless, if tested and discovered, is it an infected animal?

Dr. DEHAVEN. Indeed. That's the third point. I want to clarify, though, we are not testing blood tissue. We are testing brain tissue, and that infected animal that, in fact, was infected early in life will not test positive until just a few months before it develops clinical signs and dies. We think in most cases about 3 months before.

So that animal—there's about a 3-month window when that animal may, in fact, test positive but be clinically normal.

If we do get one of those that tests positive, indeed it is a case, it's reportable just like the animal that's exhibiting severe clinical nervous system disorder, and we would report that. It's not a blood test. It's a test on the brain tissue. I wish we had a blood test, and there's a lot of research being done to develop that so that we wouldn't have to wait for an animal to die before we test it.

You know, my job is to protect and promote American agriculture. I take that very seriously, and it's both on the animal side and the plant side. We deal with wildlife issues, as well, but I also recognize that we have to import to export, and both our import policies and our export policies need to be based in science. We can't expect those that we are trying to get to accept our products to accept them on any basis other than science, but in doing so we also need to be willing to accept their products based on science.

No one's ignoring the economic gap there. We are working mightily to overcome that. We can argue probably all day long until we're blue in the face, and even then we get another economist in the room and we'll probably have a different opinion in terms of what will be the impact, if any, on that trade gap from this room. No one's denying that that trade gap exists. I think what is at issue here is—how will it impact that trade gap?

Senator DORGAN. I have to be at the Capitol in about 5 minutes, so if there are a couple of last comments, I'd be happy to take them.

**STATEMENT OF PATRICK BECKER, PRESIDENT,
INDEPENDENT BEEF ASSOCIATION OF NORTH DAKOTA
(I-BAND); COW/CALF PRODUCER**

Mr. BECKER. Senator Dorgan, I'm Patrick Becker. I'm a rancher in Sioux County, and I guess I just want to make a comment.

When I think of the United States of America, the term gold standard was used, and to me I interpret that as the rest of the world—they view the United States as the best. They buy the best. This is lowering our standard. You know, I don't know how you—what kind of standard you want to name it, but I think I stepped in some this morning when I was checking heifers.

STATEMENT OF DOROTHY ORTS, PRESIDENT, GALLOWAY ASSOCIATION OF THE NORTH DAKOTA STOCKMEN'S ASSOCIATION; COW/CALF PRODUCER

Ms. ORTS. I want to make just one quick comment. Dorothy Orts, Oriska, and I think I figured out that trade gap. When Dr. DeHaven said we are—we are hammering our trade partners, I'm a salesman and I have never sold anything by hammering my prospects.

Senator DORGAN. Thank you.

STATEMENT OF KELLY FROELICH, DIRECTOR, INDEPENDENT BEEF ASSOCIATION OF NORTH DAKOTA (I-BAND); COW/CALF PRODUCER

Mr. FROELICH. Senator Dorgan, for the record, my name is Kelly Froelich, and I'm a rancher in Selfridge, North Dakota, in Sioux County, and also I'd like to clarify for the record that North Dakota Stockmen's Association does not represent me and thousands of other cattle producers in this state, but I'd like to—back in the late Eighties I was attending college down at NDSU, and my instructor said to us, imagine sitting in the confines of your own house and a red light goes off on your computer telling you that, oh, your old number favorite seven cow is calving, and we thought this guy is crazy. What is he talking about? And it's just around the corner. That technology is just around the corner, and now the red light is blinking on them cows up in Canada, and it's time that we implement COOL.

Senator DORGAN. Thank you very much. I want to thank all of you who come here today. I'll recognize Mr. Gaebe in the back of the room here from Governor Hoeven's office. We welcome you.

We will keep the record of this Subcommittee hearing open for 2 weeks. Anyone wishing to submit testimony to become a part of the permanent record may do so, and we would invite you to send it to my office or the Senate Commerce Committee within 2 weeks from today.

I thank all of you very much for being here. This hearing is adjourned.

[Whereupon, at 11:55 a.m., the hearing was adjourned.]